S. Hrg. 99-1047

NOMINATION OF JEFFERSON B. SESSIONS III, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

THE NOMINATION OF JEFFERSON B. SESSIONS III, OF ALABAMA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

MARCH 13, 19, 20, AND MAY 6, 1986

Serial No. J-99-120

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
63-867 O WASHINGTON : 1987

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S521-39

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NOMINATION OF JEFFERSON B. SESSIONS III, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

THURSDAY, MARCH 13, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:08 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) and Hon. Jeremiah Denton presiding.

Also present: Senators Biden, Kennedy, Simon, Heflin, Specter, DeConcini, McConnell, and Metzenbaum.

Staff present: Duke Short, chief investigator; Frank Klonoski, investigator; and Cindy LeBow, minority chief counsel.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator **DENTON**. This hearing will come to order. Chairman Thurmond has been delayed, he will be here shortly.

Today's hearing is on the nomination of Jefferson B. Sessions III, of Alabama, to be U.S. district judge for the Southern District of Alabama.

If you will remain standing, Mr. Sessions, I will ask for you to be sworn in.

Do you swear that the testimony you give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **SESSIONS**. I do.

Senator **DENTON**. Please be seated.

I will not have an opening statement. I have introduced Jeff Sessions on a previous occasion, November 22, 1985. I will not repeat the opinions and statements I made at that time about Mr. Sessions' qualifications and fitness for office, but I do still believe in all of those wholeheartedly.

I defer to my colleagues for their opening statements, if they care to make one. Senator Biden.

Senator **BIDEN**. Mr. Chairman, I have no opening statement. I have a number of questions. I will defer to Senator Kennedy, if he has a statement.

Senator **KENNEDY**. Thank you.

Senator **DENTON**. Senator Kennedy.

Senator **BIDEN**. I have one inquiry, though, before we begin. I have been on this committee, I guess, 12 years or so, and I understand the first camera there is from the Justice Department. Is that Mr. Meese operating the camera, or who is that?

I am just curious. I just want the record to note that I do not ever recall the Justice Department having a television training session that went on, but if they have that as a program, I just want to say hello to Mr. Meese and whoever else is there and move on. [Laughter.]

Do you have any objection to Mr. Meese? Are you sliding closer to me or further away? [Laughter.]

Senator **Kennedy**. I do not know whether the Chair knows about it.

Senator **Denton**. I have recognized Senator Kennedy, but I would ask that we consider that this is a hearing in the U.S. Senate and we are supposed to be objective about this hearing. I intend to be.

I am going to require order. I am not going to supervise a circus. I recognize Senator Kennedy.

Senator **Biden**. Excuse me. If the Senator will yield, the reason I dealt with it humorously is because I can find no reason why the Justice Department would be filming this, so I dealt with it humorously.

Now, if the Senator wants me to be real serious about it, I would like to ask the Justice Department before we begin as to why, for the first time, to the best of my knowledge, they are here televising or taping a session. I would be just curious to know.

Senator **Denton**. Well, Mr. Bolton, the Assistant Attorney General for Legislative Affairs, I am just informed, is here. Perhaps he would care to answer that.

Mr. **Bolton**. Thank you, Mr. Chairman.

Senator Biden, the reason that we are doing this is because we have a number of nominees who will come before the committee who have never appeared before a Senate committee before; are unfamiliar with the procedures.

We felt that in order to give them some knowledge of what happens in a confirmation hearing that this sort of thing would be helpful, and that is the sole reason.

Senator **Biden**. Thank you.

Senator **Denton**. Thank you, Mr. Bolton.

Senator Kennedy.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator **Kennedy**. Thank you.

The confirmation of nominees for lifetime appointments to the Federal judiciary is one of the most important responsibilities of the Senate mandated by the U.S. Constitution, and the examination by the Senate of a nominee's fitness to serve as a Federal judge is the last opportunity to determine whether the candidate possesses the education, experience, skills, integrity, and, most importantly, the commitment to equal justice under law, which are essential attributes of a Federal judge.

Once confirmed, a Federal judge literally has life and death authority over citizens that appear before him, with limited review of his decisions. Our Federal judiciary is the guardian of the rights and liberties guaranteed to all of us by the U.S. Constitution, and the decisions of Federal judges are constantly shaping and reshaping those rights and liberties.

This committee has a duty to our citizens to carefully examine the qualifications of nominees for the Federal bench and to give our approval only to those who have demonstrated a personal commitment to the principle of equality for all Americans and a sensitivity to the long history of inequality which we are still struggling to overcome.

Mr. Sessions, as the U.S. attorney for the Southern District of Alabama, comes to this committee with a record which, regrettably, includes presiding over the now infamous so-called Perry County voting fraud prosecutions.

In the *Perry County* case, the Government indicted three well-known and highly respected black civil rights activists on charges of voter fraud in assisting elderly black voters to vote by absentee ballot.

But for the efforts of the defendants 20 years ago, these black citizens would not have been allowed to vote. All three of the defendants were acquitted of all charges in the indictments, and some of the elderly blacks have responded to their experiences during the prosecution by vowing never to vote again. Mr. Sessions' role in that case alone should bar him from serving on the Federal bench.

But there is more, much more. We just received a sworn statement from a Justice Department attorney I know, which will be the subject of a good deal of questioning during the course of this hearing, who has worked on civil rights cases with Mr. Sessions over the period Sessions had been U.S. attorney.

Mr. Hebert has stated to the committee investigators that Mr. Sessions on more than one occasion has characterized the NAACP and the ACLU as un-American, Communist-inspired organizations.

Mr. Hebert reports that Mr. Sessions said these organizations did more harm than good when they were trying to force civil rights down the throats of people who were trying to put problems behind them.

Mr. Hebert has also stated that Mr. Sessions suggested that a prominent white civil rights lawyer who litigated voting rights cases was a disgrace to his race for doing it.

Mr. Sessions is a throwback to a shameful era which I know both black and white Americans thought was in our past. It is inconceivable to me that a person of this attitude is qualified to be a U.S. attorney, let alone a U.S. Federal judge.

He is, I believe, a disgrace to the Justice Department and he should withdraw his nomination and resign his position.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Heflin.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. Mr. Chairman, as Senator Denton previously stated, he had made a lot of words of introduction at a previous time when Mr. Sessions was here. I, likewise, made introductory remarks of Mr. Sessions at that time.

But Mr. Sessions is a native Alabamian; he is from my State. He graduated from Huntingdon College in Montgomery and received his juris doctorate degree from the University of Alabama School of Law.

After graduating from law school, he practiced law with the law firm of Guin, Bouldin & Porch in Russellville, AL. Mr. J. Foy Guin, Jr. is now a U.S. district judge in Birmingham.

And from 1975 to 1977, Mr. Sessions served as an assistant U.S. attorney in the Southern District of Alabama, a position which he held until 1977 to return to the private practice of law.

Mr. Sessions became an associate with the law firm of Stockman & Bedsole, and later became a full partner with that firm. Since 1981, Mr. Sessions has been the U.S. attorney for the Southern District of Alabama.

I approach these confirmation hearings with the theory and the general presumption that the President is entitled to have his nominees confirmed unless the nominee is unqualified or unfit or his service would be detrimental to the best interests of all of the people of the United States.

I am here to listen to the confirmation hearings and to participate in these hearings with an open mind.

Mr. Sessions, I congratulate you on your nomination and I wish you the best of luck throughout the confirmation process.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Denton.

Senator DENTON. Yes, sir, Mr. Chairman. I previously indicated, having introduced Mr. Sessions on a previous occasion, I would have no opening statement. But in view of my friend from Massachusetts' opening statement, and since it is my turn in line now, having acted temporarily as chairman, I would like to make a few comments at the outset of this hearing.

The main point I would like to make to my colleagues is that there is much more than will meet the eye or ear today to this hearing. For example, there is a document that some of my colleagues have seen. I had hoped that they would not take it at its face value, but from the statement by my distinguished colleague from Massachusetts, at least he has chosen to do that.

This document has been circulated for an unknown length of time. It came into my hands last night. I must say that in all my time in the Senate, I have never seen a document like this. I have never seen a document with as many lies in it as this one, and I am extremely disappointed that after a very diligent effort on my part in a previous hearing in which I had doubts, but did honest research on a nominee and then at the end decided that I could not oppose that nominee, that we are going into this hearing with an unprecedented blast based on intemperate and untrue allegations in what I would call a rag.

Senator KENNEDY. Would the Senator just yield on the point, since there has been reference to my statement?

Senator DENTON. Yes, sir.

Senator KENNEDY. I was referring to the sworn depositions which were taken by committee staffers yesterday. That was the reference.

Senator **Denton**. Yes, sir; but the quotations made are entirely out of context, as the questions will show, so I could not let them stand as if they are not.

Senator **Kennedy**. Fine. Everyone, obviously, is going to put what interpretation that they want. But I want the record to be clear that my references in my opening statement were referring to the sworn testimony that was taken yesterday in deposition by staffers of the Judiciary Committee and not some other document. I just wanted that to be clear for the record.

Senator **Denton**. Surely. Each one of those allegations will be the subject of much discussion today, and I hope my friend from Massachusetts is satisfied at the end that he has heard enough to make a judgment about each one of the allegations, and that is what I understand we are here for today.

I do think all of my colleagues are entitled to know that this hearing has been prefaced by a great deal of journalistic reporting, marches, appearances in the State by individuals from outside the State, and that certain individuals from outside my home State of Alabama have suggested that the current administration and its leader, President Reagan, with the Justice Department and Attorney General Meese, the FBI, presumably led by the ominous Judge Webster, and this Senator are engaged in a conspiracy to deprive black voters in my State of their right to vote; to intimidate them into not voting, particularly into not voting in my election in 1986.

We have voluminous examples of that journalism which we will make available today and for the record. That accusation is part of a whole network of activities which has been ongoing to discredit me and to turn me out of office—activities that try to establish pure lie as truth by trying to turn me into a bigot, a racist, to portray me as the opposite of what I am and what every black man, woman, or child in Alabama who knows me, knows who I am.

I know that my Democratic colleagues on this committee—I know them and I like them and I respect each of them. I am certain that none of them would participate deliberately in any kind of cheap, gutter politics. Oppose me, yes; deliberately lie about me, no.

In none of my experiences has any of them made me feel that any of them has done anything dishonorable or engaged in anything dishonorable. Political, yes; sensational, yes; opposition politics, yes. But I have nothing that I can hold against any of them to this point in the sense of getting into the gutter, and I do not think any of them can hold it against me for opposing Mr. Sporkin because I think I did so, in their eyes, at least in an honorable fashion. If they disagreed with my doubts, I do not think they disagreed with the tactics.

But that accusation to which I referred that the State of Alabama, the Justice Department, the President, and so on, have characteristics that want to block out black voters is the whole context in which this so-called hearing about a judge's nomination is being held, and you are entitled to know that.

I have provided my colleagues with copies of certain news reports from media in my State. I will also put those articles and others into the official record of those proceedings.

I will refer first to an article that appeared in the Birmingham Post Herald, dated June 25, 1985. That article in your handout is article No. 1, if you care to follow along.

There is a quotation from a State senator from Maryland. The Birmingham Post Herald is one of the largest in the State of Alabama. There is a quotation there in this article of Clarence Mitchell, a State senator from Maryland, who says, "The administration is conducting this investigation as a political tool for Senator Jeremiah Denton," and that is in reference to the Perry County hearings which you will be hearing so much about today.

Mr. Mitchell said that the FBI used intimidation tactics to discourage blacks from voting in future elections.

In article No. 2, the Mobile Press, probably the second or third biggest newspaper in Alabama, dated June 25, 1985, the same gentleman, Clarence Mitchell, State senator from Maryland, says, "We think war has been declared by the Justice Department in Alabama and we are prepared to go to war."

In that same article, District of Columbia Representative Walter Fauntroy says:

> We have probably entered a period of Government lawlessness in stifling black participation in key counties across the South. Present now is an assault by prosecutors on behalf of the Government on those who have been successfully stimulating black voters' participation in counties across the South.

Similar comments were made, as stated in the Mobile Press article of November 19, 1985, No. 3, quoting Rev. Jesse Jackson, who I think is here today. I have to say that the charges made characterize me as being behind some sort of a conspiracy.

All I can say is that I believe that no one in this room really believes that. Certainly, no one in Alabama really believes that. I never knew the Perry County thing was going on until I read about it in the newspapers.

From what I know about it right now and what I think will be discussed today, I have no sense of shame. I rather think that Mr. Sessions would not have been doing his duty had he not taken this case under his jurisdiction.

We will examine all that during the trial—I mean during the hearing. [Laughter.]

That is what it is; that is what it is. It is a trial of me and Reagan, as was introduced by questioning the use of the camera here. I am not suggesting that any of my colleagues are going to play dirty politics: quite the contrary, I have already expressed.

But I believe they are going to see through the nonsense here, and I hope so because otherwise a disservice will be done to Mr. Sessions. I am not worrying about myself because I think whatever goes on here today will not adversely affect my chances for reelection.

I am not certain what testimony will be presented in opposition to Mr. Sessions, but looking at the list of prospective witnesses, you get a pretty good idea. If it is the intent of those who will testify in opposition to retry the so-called *Perry County* case, I would welcome that opportunity.

I think my colleagues will be enlightened to hear from black voters and officeholders in Perry County who gave testimony that their votes were stolen or altered, which was the reason the investigation was begun.

Let us not lose sight, I ask my Democratic colleagues, of one overriding consideration, Mr. Chairman. The key complainants in the *Perry County* case were black. I would have had a problem with Mr. Sessions' nomination myself if he had not gone forward with that case, based on what I have since heard and read about the case.

But conspiracy in voter intimidation—I am sure that today's hearings will eliminate that, along with any further witnesses that might need to be called.

Please hear this: There have been several vote fraud investigations and trials in Alabama during the term of the present administration, and I am now defending the administration against the charge that has been leveled so repeatedly about wanting to intimidate black voters and concentrating on counties which are predominantly black in looking at voter registration or voting procedures.

Here are some examples of those trials. In fact, I think this is an exclusive list, including all that I know of at this point.

A 1981 case in Randolph County involved the indictment of 11 people, 1 of whom was black. Three people, all white, were convicted, including the incumbent sheriff.

In 1983, in Bullock County, a black city councilman was indicted and pled guilty to a voting rights violation. In Marshall County in 1984, one person, white, was indicted and convicted of charges similar to the *Perry County* case.

I do not know why that was not brought out in the allegations. I cannot believe there were short memories or inaccurate records, but those are the kinds of cases that have taken place in Alabama.

Have blacks been intimidated in Alabama as a result of these cases? In the Mobile Press article of November 19, 1985, No. 3 in your list, the Greene County tax assessor, John Kinard, who happens to be black, said that the government investigation showed that "everybody is treated equal, black and white."

He went on to say that in recent cases, "black people conspired to steal an election. They got caught doing it and began blaming Ronald Reagan and Edwin Meese. When they got caught, they started the whole thing of hollering racism and intimidation."

It is the black people of Alabama who are going to be the most indignant about this farce. I have no propensity to engage in a black-versus-white thing. I am very happy, and have made speeches over and over again throughout my State, that the reason for the rise of the South economically, the Sun Belt, is that the blacks have finally been permitted, after a needed kick to the whites on the part of the Federal Government—have finally been permitted access to education opportunities and business opportunities that they did not have before.

That use of our natural resource, the most precious one we have, manpower, humanpower, has been brought to bear, not just suffocated. I have said that over and over. In all of my campaign speeches, when I was introduced as a big hero I would say I am not a hero. If you want to look for a hero, look for the black corporal who walked point in the jungle at night in Vietnam.

I had white men walk up to me and say I agree with that, but if you are going to keep saying that in Alabama, you had better take along a body guard. I found that not to be true. Every time I have ever made that analogy, the white people have stood up and applauded.

There is none of this foolishness on any scale. There may be some individuals on both sides. I believe there is still not freedom of opportunity existing for the blacks. I believe some of the social opportunities are not there which are connected with business.

But I will not be portrayed as a racist; I will not have my President portrayed as one, or betrayed by the allegation that he is one.

Two Birmingham newspaper reporters wrote an article which appeared in the Mobile Press of October 14, 1985; that is No. 4. I will not go through all the quotes, but the article is a series of interviews with voters in the black belt of Alabama asking them about intimidation.

Not one black voter, Mr. Chairman, not one, gave any indication whatsoever of intimidation. The prime point to be kept in mind as you listen to a prepicked cast of opposition witnesses, which list I learned about only yesterday, and some of whom I learned about 2 minutes before coming in this room—the point is that these cases, Perry and Greene Counties, involve allegations by blacks about votes being stolen from blacks.

Now, I ask you, gentlemen, please keep that in mind because that point has been ignored in the allegations which are politically oriented, and I do not think you are at the level of that kind of political fighting.

Mr. Chairman, we were not expecting such a circus as appears to be ready to unfold here. The facts are clear, and we believe and hope they will be clear to all members of this committee before this day or subsequent days are out.

We do not have a long list of witnesses today. We first did not think it was necessary; then it was not possible. But we will parade as many witnesses as necessary to bring forth the truth after what we hear today.

There are a number of people ready and eager to come to testify on behalf of Jeff Sessions and about the *Perry County* case and about these general allegations, if necessary.

At the request of my colleagues on the other side, we agreed to put this nomination over for 3 months now. A very thorough investigation has apparently been conducted, and I understand that minority counsel has been quoted in the press as saying that Mr. Sessions was very helpful and most cooperative in that investigation.

So if there are some substantive objections to Jeff Sessions' qualifications or if you want to dig into these allegations which I have said are not fair, help yourselves. Let us hear them, but let us be fair with one another, honest with one another. I think I have tried to be that in my service here and I only ask for that today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The distinguished Senator from Arizona, Mr. DeConcini.

Senator DECONCINI. Mr. Chairman, I have no statement. I am here to listen to this. I think this is a very important hearing and I have not yet made up my mind as to how I am going to vote on this nomination. I want to assure the Senator from Alabama that I only know the little bit I have read in the paper and I never believe all of that. I look forward, Mr. Sessions, to hear the testimony from you and your supporters and from those who are opposed to this nomination.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The distinguished Senator from Illinois, Mr. Simon.

OPENING STATEMENT OF SENATOR PAUL SIMON

Senator SIMON. Mr. Chairman, I share some of the concerns of my colleague from Massachusetts. This morning, I heard on National Public Radio a reference to an organization I have belonged to since I was a teenager: the NAACP. You reportedly called it a pinko outfit.

I am concerned that Federal judges are fair to all citizens, and I have to tell you candidly on the basis of what I have seen here that you have an uphill fight getting my vote.

I have made no commitments to anyone, but I want to be convinced. I think that is where some of my other colleagues are, too.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Kentucky, Mr. McConnell.

Senator McCONNELL. Thank you, Mr. Chairman. I do not have a statement. I just came over to listen, and so I will defer to whoever is next.

The CHAIRMAN. Mr. Sessions, I believe you have been sworn.

TESTIMONY OF JEFFERSON B. SESSIONS III, OF ALABAMA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

The CHAIRMAN. Mr. Sessions, would you summarize for the committee your background and legal experience?

Mr. SESSIONS. Mr. Chairman, I graduated from the University of Alabama Law School and began the practice of law in the small town of Russellville, AL, with the firm of Guin, Bouldin & Porch, a very fine smalltown law firm. We had one of the best law libraries in the State.

The senior partner of the firm, when I joined it, was Mr. J. Foy Guin, Jr., who was appointed as a Federal judge in Birmingham, the Northern District of Alabama. I practiced there for about 2 years, primarily in civil litigation.

Judge Heflin, I participated in a case in the supreme court that involved a car race accident with a guy from Freedom Hills. I believe you participated on the panel, and it was argued at the University of Alabama. I participated in writing the brief, but not in arguing the case.

I did a lot of civil litigation at that time. Then I joined the U.S. attorney's office in Mobile and handled primarily criminal litigation, but also civil litigation. I defended a wrongful death case and a number of other civil cases, but primarily my 2½ years there involved criminal litigation of a very heavy nature. I tried cases before a jury on a regular basis.

After that, I left the U.S. attorney's office and joined the firm of Stockman & Bedsole, a very fine AV-rated law firm in Mobile. It was the firm from which the U.S. attorney who had been appointed by President Carter, William A. Kimbrow, had left.

I stayed there for 4 years, practicing primarily civil litigation. I defended a number of criminal cases, but primarily my work was civil litigation with that firm. After that, I was fortunate to be given the opportunity to serve as U.S. attorney, and as U.S. attorney I have probably carried as heavy, or I would think almost certainly the heaviest trial load of any U.S. attorney in the country.

Since I have been U.S. attorney, I have tried 17 cases to judgment. One lasted 7 weeks; it was against two judges, a lawyer, and a bail bondsman. Another one was 4 weeks against a bank president, a lawyer, and a State senator.

The judge's case that lasted 7 weeks—the jury convicted all defendants, of every count named in the indictment against each defendant. We got a hung jury on one of the defendants in the other case that lasted 4 weeks. I have tried cases that lasted 2 weeks, and so forth.

During that time, I have supervised the civil litigation in our office, although I have not tried any civil cases. What I do in my office—the civil attorneys will come and discuss strategy, and so forth, in civil cases.

I think I have a good background to be a judge. I have practiced in small State courts; I have practiced in criminal court in the State system. I have represented clients that come to me without money. I have represented many of them; I have given them advice.

My door was always open; I would talk to any client that wanted advice without any charge. That is basically, Mr. Chairman, my experience.

The CHAIRMAN. Would you tell the committee what you feel have been the major accomplishments of the U.S. attorneys under your leadership?

Mr. SESSIONS. Mr. Chairman, within a year after I became U.S. attorney, our caseload in the office had increased over 50 percent with the same staff that was there when I came.

We prosecuted some of the most significant cases ever to be prosecuted in Mobile. I am very proud of that. This past year, the 1985 statistics show that our office was third in the Nation in increase in overall caseload.

We try a lot of cases in addition to that. We do not just file cases to accept pleas on cases. We have—in a four-State region of Alabama, Georgia, Tennessee, and Mississippi, my office, the smallest one in that region, has had more favorable rulings in the Court of Appeals for the Eleventh Circuit than any other district except Atlanta.

We have 8 lawyers; Atlanta has 38. Every other district—one district in the region has 24 lawyers, and we handled more favorable appeals in the court of appeals. That indicates, I think, that we are trying quality cases. They are important cases because those are the ones that are appealed. I am very proud of that.

Our civil caseload has increased dramatically. I think the most painful thing that has ever been said to me at any time, public or private, was when Senator Kennedy said that I was a disgrace to the office. That is the most painful thing I have ever had said to me. I am proud of that office; I am proud of the work that I have done, and it breaks my heart to hear that said.

The CHAIRMAN. Mr. Sessions, there have been concerns regarding your role in prosecuting voter fraud cases in Perry County, AL. Would you tell the committee how these cases developed and the facts surrounding the resulting prosecutions?

Mr. SESSIONS. Mr. Chairman, that case first came to my attention when I learned of a problem in Perry County in 1982. The district attorney there called our office. He had written the Civil Rights Division of the Department of Justice and written other people. It was suggested to him that he contact our office if fraud was involved in the voting process. He did.

I talked with him on occasion, but took no action. At that time, the Department of Justice was made aware that we had complaints. After the election in 1982—that is, the Democratic primary in 1982, I believe—Mr. Johnson, the district attorney, conducted a grand jury investigation in Perry County.

He sought indictments, I believe, against two individuals and the grand jury at that time declined to return an indictment, but they issued a report. In that report, which I have a copy of, the grand jury of Perry County, which I am informed had a black foreman and a majority black composition on this grand jury—Perry County is a fairly substantially black county—the grand jury said this:

> This grand jury has extensively and exhaustively investigated the voting situation in Perry County. Our greatest concern is to assure a fair election for all parties and all people.
>
> At this point, we are convinced that such an election is being denied the citizens of Perry County, both black and white. The primary problem appears to be the tampering of the right to vote of black citizens in this county.
>
> The problems are intimidation at the polls and abuse and interference with the absentee balloting process. These problem areas lie within gray and uncertain areas of the law and are generally confined to those segments of our society which are aged, infirmed or disabled. We encourage vigorous prosecution of all voting laws, and especially would request the presence and assistance of an outside agency, preferably federal, to monitor our elections and ensure fairness and impartiality for all.

That was signed by the foreman of that grand jury.

After we were made aware of that and after Mr. Johnson had conducted his investigation after the election, we reviewed the situation. Some materials were sent to me. My assistant, E.T. Rolison, Jr., actually reviewed the materials; I did not.

And it was the conclusion of our office that probably this investigation that he had conducted would stop the problem in Perry County; there would not be any more fraud, and we did not see any need at that point to conduct any significant investigation, and it would have been a significant one to undertake.

And we just decided not to do anything about it, and advised him of such. I had no more conversations about the case. We had no idea at all that we might conduct another investigation in Perry County until a few days before the September 4 primary in 1984.

Senator BIDEN. How long after the grand jury was that?

Mr. SESSIONS. Well, the grand jury report, Senator, was in 1983; I believe March 1983. So during that period, I had really forgotten about the county.

Mr. Johnson called and he told me at that time that he had in his presence a Mr. Reese Billingslea, a black county commissioner in Perry County. Mr. Billingslea was running for his third term, was one of the first blacks to be elected in Perry County.

He said that Mr. Billingslea and other black candidates were very concerned about the election. Mr. Billingslea has told me that he contacted the Department of Justice Civil Rights Division to ask for help in this election because he was seeing a massive absentee campaign and he believed and was certain and had information that fraudulent activities were going on.

He was advised by, I believe he told me, a Mr. Quan in the Civil Rights Division to contact me, and since Mr. Johnson knew me, that is how the call came about. They discussed at that time various things.

It was suggested that we might consider a search warrant of this house where ballots were being collected and brought, and I quickly advised them that would not be proper. It would interfere with the election and was against the policy of the Department of Justice, and besides I did not think there was a basis for that.

I was advised by Mr. Johnson that a contest was being filed; that a number of candidates—three of them were black, one white—were filing an election contest because they were afraid, in fact, that the election was going to be stolen from them and they wanted and were going to ask that the absentee ballots be numbered so that the envelope that comes out—you have an envelope and it has the name and address of the voter, but the ballot that is in it has no name or number on it.

And once they are separated and put into the two boxes when they are opened and counted, they are forever separated and nobody could ever tell if someone changed a person's ballot.

I was told that that had been done in 1982 and that this was going to be asked for again, and that a private attorney, who I—I am not sure who the private attorney was—the private attorney was going to file this lawsuit, and that is, in fact, what happened.

Senator BIDEN. If I may interrupt, if they had put the number on the ballot and the envelope, then you would know who voted which way, right?

Mr. SESSIONS. That is correct.

Senator BIDEN. OK.

Mr. SESSIONS. The circuit judge in Perry County issued such an order, as had been done, I think, by a different circuit judge before, 2 years before, and the ballots were collected and counted.

Mr. Billingslea won, despite a heavy loss in the absentee box, and the other candidates who filed the election contest also won, despite the absentee box.

Let me say this parenthetically: The number of absentee ballots cast in Perry County were really extraordinary; 729 absentee ballots were cast out of about 4,000 total votes. It turned out—another point, Mr. Chairman; we were told when Mr. Johnson called me that Albert Turner and others were supposed to be collecting these ballots and that they would all be mailed the night before the election at the post office in Marion. That is what the information was.

So I suggested that we observe the post office, or we discussed it with my assistant, and that was communicated to Mr. Johnson with my approval. And we also decided to conduct a mail cover of the post office, which simply would be that the postman would be authorized to write down the return address on the outside of the envelope of each letter that is mailed.

And sure enough, that night, the night before the election, the defendant, Albert Turner, deposited, I believe, 347 ballots, along with his wife, and the defendant, Spencer Hogue, deposited 170-some-odd absentee ballots that night.

At the time the absentee ballots were opened on election day and counted—and we had specifically instructed our people to do nothing that would call any attention to this election publicly or to do anything that would affect the outcome of it, and we had been in regular contact with the Public Integrity Section of the Department of Justice to make sure our procedures were correct on this.

And when those ballots were opened, there was a substantial number of them that had candidates' names crossed out. There would be an *x* by one candidate and both the name and the *x* would be crossed out and an *x* placed beside another candidate's name.

So that is where the investigation began. I believe that was your question, how it began.

The CHAIRMAN. Mr. Sessions, it is my understanding that Federal intervention into voter fraud cases requires the U.S. attorney's office to receive approval from the Department of Justice Public Integrity Section. This action is required prior to commencing any full-scale investigation using a grand jury to subpoena witnesses or initiating criminal proceedings.

Mr. Sessions, is that a correct description of the process, and did your office follow the appropriate procedures in requesting approval to investigate the allegation of voter fraud in Perry County and the subsequent referral to the grand jury?

Mr. SESSIONS. Mr. Chairman, we did. That is a correct description and we followed it.

The CHAIRMAN. I would like to offer for the record a copy of a letter from Gerald E. McDowell, Chief, Public Integrity Section, Criminal Division, to Mr. Sessions, dated September 24, 1984, which states, in part:

> DEAR MR. SESSIONS: This will confirm our previous conversations concerning possible Federal voter fraud violations that may have taken place in Perry County in connection with the Alabama primary election which occurred on September 4, 1984.
>
> Federal candidates for Congress and for the U.S. Senate were voted upon at that time. We understand that prior to this election, information came to your attention from a source you considered reliable to the effect that Albert Turner, a local political activist in Perry County, and several associates of Turner's, intended to manipulate absentee ballots that they had been responsible for soliciting from Perry County residents.
>
> This manipulation was apparently to take place in Turner's residence, at which time Turner and his associates had physical custody of the ballots involved. Thereafter, Turner and his associates were to mail the ballots involved at the post office in Marion, AL, for transmission to the county registrar for tabulation.
>
> Armed with this information, you requested surveillance of the Marion Post Office during the period that Turner was supposed to mail the subject ballots. This surveillance disclosed that Turner and an associate arrived at the post office when expected with literally hundreds of absentee ballots, and that these two individuals proceeded to place these ballots in the mails.

Thereafter, visual inspection of the ballots thus deposited was conducted by the Postal Inspection Service, which in turn disclosed that over 540 absentee ballots were involved and that several of them contained indicia that they had been opened.

Based on this information, the district attorney for the judicial district encompassing Perry County obtained a protective order from an Alabama State probate judge requiring that the ballots involved here be numbered in such a way that they may subsequently be paired up with their respective ballot envelopes.

Since these ballot envelopes contained the signature and the oath of the voters who in each instance cast the ballots enclosed, this protective order will permit the ballots delivered by Mr. Turner to be specifically identified by voter.

This evidence is sufficient, in our view, to constitute the predicate for an investigation by the Bureau, should the Perry County district attorney specifically request federal intervention in the matter.

The principal statutory basis for this investigation would be mail fraud law which, as you know, has been interpreted to apply to schemes to fraudulently manipulate and cast absentee ballots.

As you know, the feature of this matter that makes it unique is the protective order which the State obtained allowing specific suspicious ballots to be linked to identified voters. As such, your investigation of this matter would probably best begin with a canvass of at least a sampling of the voters involved to ascertain whether the ballot attributed to each such voter, in fact, reflected the votes that the voter involved intended to cast, and to determine the circumstances under which the voter involved was induced to vote absentee and to entrust his or her ballot to the custody of Mr. Turner and his associates.

However, since this unique investigative technique will require that the confidentiality of the ballots in question be violated, we strongly urge you to have the appropriate State authority approve the pairing up of the ballots with their numbered ballot envelopes before the investigation suggested above is attempted.

Pursuant to 9 USAM 2.133(h) and 2.133(o), you are authorized to conduct a Federal criminal investigation of this matter along the lines suggested above. In that this investigation is unique, we would appreciate your keeping us currently advised concerning its progress. We also trust that you will not hesitate to let us know how we can help you further in this matter.

I am going to ask the investigator to hold up a ballot here to show the changes that were made in them. These are actual ballots; if you will, hand these down to the witness.

[Aforementioned letter follows:]

GEMcD:CCD:csm

Washington, D.C. 20530

SEP 24 1984

Mr. Jeff Sessions
United States Attorney
P.O. Drawer E
Mobile, Alabama 36601

Re: Perry County Voting Matter.

Dear Mr. Sessions:

This will confirm our previous conversations concerning possible federal vote fraud violations that may have taken place in Perry County in connection with the Alabama Primary Election which occurred on September 4, 1984. Federal candidates for Congress and for United States Senate were voted upon at that time.

We understand that prior to this election information came to your attention from a source you considered reliable to the effect that Albert Turner, a local political activist in Perry County, and several associates of Turner's, intended to manipulate absentee ballots that they had been responsible for soliciting from Perry County residents. This manipulation was apparently to take place in Turner's residence, at which time Turner and his associates had physical custody of the ballots involved. Thereafter, Turner and his associates were to mail the ballots involved at the post office in Marion, Alabama, for transmission to the county registrar for tabulation.

Armed with this information, you requested surveillance of the Marion post office during the period that Turner was supposed to mail the subject ballots. This surveillance disclosed that Turner and an associate arrived at the post office when expected with "literally hundreds" of absentee ballots; and that these two individuals proceeded to place these ballots in the mails. Thereafter, visual inspection of the ballots thus deposited was conducted by the Postal Inspection Service, which in turn disclosed that over 540 absentee ballots were involved, and that several of them contained indicia that they had been opened.

Based on this information, the District Attorney for the judicial district encompassing Perry County obtained a protective order from an Alabama State Probate Judge, requiring that the ballots involved here be numbered in such a way that they may subsequently be paired-up with their respective ballot envelopes. Since these ballot envelopes contain the signature and the oath of the voters who in each instance cast the ballots enclosed, this protective order will permit the ballots delivered by Mr. Turner to be specifically identified by voter.

This evidence is sufficient in our view to constitute the predicate for an investigation by the Bureau, should the Perry County District Attorney specifically request federal intervention in the matter. The principal statutory basis for this investigation would be the mail fraud law, which as you know has been interpreted to apply to schemes to fraudulently manipulate and cast absentee ballots. See e.g. United States v. Clapps, 632 F.2d 1148 (3rd Cir. 1984); United States v. Odom, 736 F.2d 104 (4th Cir. 1984); accord: United States v. Curry, 681 F.2d 407 (5th Cir. 1982); United States v. McNeeley, 660 F.2d 496 (5th Cir. 1981 - summary order).

In that connection, to constitute a criminally actionable fraud it will be necessary for your investigation to confirm either that Turner and his associates fraudulently and improperly opened and edited the ballots entrusted to their custody for mailing; or that Turner and his associates destroyed ballots entrusted to their custody; or that Turner and his associates obtained ballots from voters without the active participation of the voters involved; or that Turner and his associates obtained blank absentee ballots from the voters involved; or that Turner and his associates bribed the voters involved to vote absentee. It will also be helpful, although not in our judgment critical to such an investigation, to demonstrate that the voters involved in the transactions linked to Turner and his associates were not entitled under Alabama law to cast absentee ballots in the 1984 Alabama Primary Election. In the event that you can prove factually that fraudulent absentee ballots were cast for candidates running in either or both the federal contests that were on the ballot in this election, prosecution under 18 U.S.C. §§241/242 is also a possibility.

As you know, the feature of this matter that makes it unique is the protective order which the State obtained allowing specific suspicious ballots to be linked to identified voters. As such, your investigation of this matter would probably best begin with a canvass of at least a sampling of the voters involved, to ascertain whether the ballot attributed to each such voter in fact reflected the vote(s) that the voter involved intended to cast, and to determine the circumstances under which the voter involved was induced to vote absentee and to entrust his or her ballot to the custody of Mr. Turner and his associates. However, since this unique investigative technique will require that the confidentiality of the ballots in question be violated, we strongly urge you to have the appropriate state authority approve the pairing-up of the ballots with their numbered ballot envelopes before the investigation suggested above is attempted.

Pursuant to 9 U.S.A.M. 2.133(h) and 2.133(o), you are authorized to conduct a federal criminal investigation of this matter along the lines suggested above. In that this investigation is unique, we would appreciate your keeping us currently advised concerning its progress. We also trust that you will not hesitate to let us know how we can help you further in this matter.

Sincerely,

Gerald E. McDowell, Chief
Public Integrity Section
Criminal Division

By:
Craig C. Donsanto, Director
Election Crimes Branch
Public Integrity Section

cc: Cairi Matthews
Associate Deputy Attorney General

William J. Clancy
Public Corruption Unit
Federal Bureau of Investigation

Barry Weinberg
Voting Rights Section
Civil Right Division (FYI)

Senator KENNEDY. Can I ask, Is this one of the absentee ballots that was collected by the defendant?

Mr. SHORT. This is one ballot, Senator.

Senator KENNEDY. Of all of the absentee ballots?

Mr. SHORT. Of all; that is correct, sir.

Senator KENNEDY. And the defendants—how many did they file, so that we have a point of information of what is being held up here?

Mr. SESSIONS. That is 1 of the 504, Senator, that were filed.

Senator KENNEDY. It is 1 of 504.

Senator BIDEN. All of which were mailed by the defendants?

Mr SESSIONS. 300-and-something by Turner and 170-something by——

The CHAIRMAN. Speak louder; we cannot hear you.

Mr. SESSIONS. 300 by defendant Turner—340, I believe—and 170-some-odd by the defendant Hogue, within a couple of hours of each other the night before the primary.

The CHAIRMAN. Were the ballots all changed in a similar manner?

Mr. SESSIONS. All the Turner ballots were changed in the same manner. Each one of those that traced back to Albert Turner, he crossed out both the *x* and the name, as you can see in that ballot. The Hogue ballots—each one of them were changed by erasing the *x* that had been placed and placing a new *x* by a different candidate's name. In each instance, the changes were from non-Turner-supported candidates to Turner-supported candidates.

Senator KENNEDY. Could I, just for the point of the record—are these the defendants that were found not guilty that we are referring to?

Mr. SESSIONS. Yes, sir; but, Senator——

Senator KENNEDY. I thank you. I do not have any other questions.

Mr. SESSIONS. I understand that, but I would ask you to——

The CHAIRMAN. Go ahead and answer; you have a right to answer. You can explain it.

Mr. SESSIONS. Please evaluate me on my decisionmaking process and whether or not the indictments should be brought. Cases do fail and you do lose cases, but the question is, Is the integrity of your decisionmaking process good?

The CHAIRMAN. Do not drop your voice; speak out so we can all hear you.

Mr. SESSIONS. All right, sir.

Is that the top ballot, Mary Shelton's ballot there?

Mr. SHORT. That is correct.

Mr. SESSIONS. I have here a copy of a statement that Mary Shelton gave, and we had this statement and her grand jury testimony, which is still not available for production. But she was 31 years of age and she stated—she was shown that ballot by an agent of the FBI, I believe—yes, by an agent of the FBI, and she stated that she voted it by herself and no one was present when she filled out the absentee ballot.

She said she did not observe Albert Turner or Evelyn Turner, who I believe are listed as witnesses to her signature on the ballot.

She did not—they were not present. She stated that she did not make any changes on the ballot.

She stated she personally sealed the ballot. She did not observe Albert or Evelyn Turner witness it. She stated that Albert Turner picked up the ballot during an unannounced visit when he came by.

She was shown that ballot and she said she did not make any changes, and specifically she said she voted for Reese Billingslea and not for Setzer Howard, the Turner slate candidate.

The CHAIRMAN. Now, you are speaking about the ballot here that you are referring to?

Mr. SESSIONS. That very ballot right there. She said there were no——

The CHAIRMAN. And this is the person who voted that ballot?

Mr. SESSIONS. That is correct, Mr. Chairman, and she said that her vote for Reese Billingslea had been crossed out, and Reese Billingslea is running for his third term as a black incumbent politician in the county and these voters were all black who were being interviewed.

She said she voted for Eddie Perry and not John Ward. Ward was a slate candidate of Albert Turner. She said she voted for Warren Kinard and not for Wilbert Turner. All of these candidates that I have mentioned are black candidates she voted for, and the ballots were changed from black candidates to slate black candidates.

She said she voted for Ann Nichols and not for Tululah Nelson, and all of those had been changed, Mr. Chairman.

Senator DENTON. Mr. Chairman, may I ask that that statement he just read by Ms. Shelton be included in the record?

The CHAIRMAN. Without objection, so ordered.

[Aforementioned material follows:]

FEDERAL BUREAU OF INVESTIGATION

1 Date of transcription 10/4/84

31. MARY DeLOIS SHELTON, Route 6, Box 391, Selma, Alabama 36701, having been advised of the official identity of the interviewing agent and the nature of the interview, thereafter provided the following information:

SHELTON stated she was born August 31, 1953.

SHELTON advised she is employed by Selma Apparel, 107 Selma Bypass, Selma, Alabama, Telephone No. 205/872-7441.

SHELTON stated she has no other income.

SHELTON stated the reason for voting absentee was due to work and that she was unable to get to the polls in Perry County, Alabama, after leaving her employment in Selma.

SHELTON stated no one suggested to her to use absentee voting.

SHELTON stated she was not out of town at the time of the last election in September. SHELTON stated she received her absentee ballot in the mail. SHELTON stated she was not solicited by any candidate nor did any candidate provide information or assess to absentee balloting.

SHELTON stated she voted by herself, and no one else was present when she filled out the absentee ballot. SHELTON stated no person influenced her vote. SHELTON stated no person intimidated her in any way in connection with voting.

SHELTON stated she did not observe ALBERT TURNER nor EVELYN TURNER witness her signature on her affidavit of absentee voter. SHELTON stated that she did not make any changes on the voting ballot.

SHELTON stated she personally sealed her ballot but did not observe ALBERT TURNER nor EVELYN TURNER witness it. SHELTON stated her ballot was returned by ALBERT TURNER of Marion, Alabama. SHELTON stated TURNER picked up the ballot at her house, in person, during an unannounced visit by TURNER.

SHELTON did not recall how she obtained the application

Investigation on 9/26/84 at Selma, Alabama File # Mobile 56C-215

by SA ANDREW T. DUANE ATD/slm Date dictated 9/28/84

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

MO 56C-215

Continuation of interview of MARY DeLOIS SHELTON, Page 2

for the absentee ballot.

An absentee ballot with four (4) names crossed out was displayed to SHELTON who stated she did not make any changes on her ballot. Specifically, SHELTON stated she voted for REESE BILLINGSLEA and not SETZER HOWARD. SHELTON stated she voted for EDDIE PERRY, and not JOHN WARD. SHELTON stated she voted for WARREN KYNARD, and not WILBERT TURNER. SHELTON stated she voted for ANN NICHOLS, and not TALLULAH NELSON.

Mr. SESSIONS. I have that——

The CHAIRMAN. Now, that is what she told the FBI and she testified to at the trial?

Mr. SESSIONS. And she testified at the trial, Mr. Chairman, and let me point out what she testified to at trial. She was called; she said that is her ballot, but "she did not mark anything out."

Going down the ballot, she said she voted for Reese Billingslea, but it had been scratched out and she did not put an *x* for Sentzer Howard. She said she voted for Eddie Perry, and she went to school with him, and it was scratched out and voted for another one. Eddie Perry was a friend and was known by most of the Sheltons.

She said she voted for Warren Kinard, and it had been scratched out and voted for another one. She said Albert Turner had picked up her ballot.

Mr. Chairman, I think a proper review of this situation and questions raised by this committee should deal with the evidence that we had in this case. I do not know a lot of things about the law, but I am pretty good at evaluating a case as a prosecutor. I believe I can do a fairly good job at that.

And let me tell you what the evidence we had just with regard to the Sheltons was, if it is appropriate at this time.

The CHAIRMAN. Go ahead.

Mr. SESSIONS. All right, sir.

The CHAIRMAN. Are they black or white?

Mr. SESSIONS. They are all black.

We just talked about Mary D. Shelton. Loretta Shelton—their stories never changed, Mr. Chairman. They said——

The CHAIRMAN. Let me ask you a question before we pick those ballots up and show them to the Senators.

Mr. SESSIONS. All right.

The CHAIRMAN. Are those ballots by voters who said they did not vote the way that the ballots turned in indicated?

Mr. SESSIONS. I have not examined each and every one. They were ballots introduced at trial by the Government, so I assume almost each and every one of them went to the individual counts in the indictment. I believe they all do, but maybe—there could have been a ballot introduced for another reason, but I do not think so.

The CHAIRMAN. Go ahead. You can hand those ballots up and pass them around and let the Senators on the committee see them.

Mr. SESSIONS. Loretta Shelton—and I will hold this up; it has one, two, three, four mark outs. It actually looks identical to the ballot there that is behind you, I believe.

Loretta Shelton is age 27. She said that she filled out her absentee ballots in the presence of her husband; was not influenced to vote by any other person. She said she signed the envelope containing her ballot, but did not observe the two witnesses, and the witnesses are Albert and Evelyn Turner.

She observed her ballot; it was shown to her. She said she did not cross out any individual's name and did not make any of the changes on the ballot. At trial, Loretta Shelton said that she worked at the Dallas Uniform Co. "I did not mark those out." Those were her direct quotes when she was shown the ballot.

She said she voted for Eddie Perry. "He is my cousin," she said, and it was marked through. She voted for Kinard, and it was marked through. "Somebody changed it." And she said Albert Turner was the one that picked up the ballot.

Edward Shelton—four changes on his ballot, almost identical to that ballot behind you, Mr. Chairman. Shelton advised that his wife, Loretta Shelton, had marked the ballot and placed it in the envelope. Albert Turner was present when Loretta Shelton marked the ballot.

Shelton stated he did not recall any of the individuals he voted for, except for Eddie Perry. When the ballot was displayed to him, he said he did not observe it when it was being marked and he could not say which name—whether any of the individual's names had been crossed out, with the exception that he and his wife agreed they would vote for Eddie Perry and not John Ward. He said it was not sealed or signed in his presence.

Fannie Shelton, age 36; there were four different changes on her ballot. She said that she marked the ballot, placed it into the ballot envelope, sealed the ballot, and signed her name on the back.

She said she did not observe Albert Turner or Evelyn Turner witness her signature, and they signed as witnesses on both of these ballots. She stated that Turner came by and picked up the ballots.

Upon being displayed her ballot, Shelton stated she did not cross out any of the individuals' names and did not vote for the individuals as shown on this ballot, which is marked out in a similar fashion as the others.

She said she voted for Don Harrison and not H.W. McMillan. She said she voted for Reese Billingslea and not Sentzer Howard. She said she voted for Eddie Perry and not John Ward. She stated she voted for Warren Kinard and not Wilbert Lee Turner. She said she voted for Ann Nichols and not Tululah Nelson.

Senator **Kennedy**. Mr. Chairman, I just opened at random 10 dozen of these and I have Harrison, McMillan, Harrison, McMillan, just on four of them, some of them crossed out. Some of them voted for Harrison, some for McMillan, and they are not tampered with as others that have been tampered with.

I hope we are going to have a chance to hear the other attorneys in response to this some time early in the course of this hearing, if we are going to get into retrying a case that took, evidently, 3 hours for the jury to find not guilty.

Mr. **Sessions**. Senator, that is correct, but——

The **Chairman**. Well, as I understand it, it has been charged here that he is not fit to be a judge because of the way he handled this case. I think he has a right to show that what he did was to carry out his duty, whether the jury convicted them or not, and that is what you are trying to show here, as I understand it.

Senator **Kennedy**. Well, the only point is he is talking about Harrison and McMillan, and some of these vote for Harrison, some for McMillan. So if we are going to get into the details of submitting certain evidence, I think that we ought to be very precise.

I have, as I say, 10 here; some are for Harrison, some for McMillan. Some are altered and some are not, and I do not know quite what we are trying to show with this line of inquiry. But I am glad to spend some more time listening to it.

The **Chairman**. Tell him what you are trying to show.

Mr. SESSIONS. I just want to point out that they had a slate as to almost everybody on the ballot, but as to the court of criminal appeals, it had a McMillan and Harrison on it. They were really not that much concerned about those ballots and those races, and sometimes that race was changed and sometimes not.

The pattern was the Billingslea-Kinard race were the ones the Turner people, or Albert Turner and Hogue, seemed to be most committed——

The CHAIRMAN. And did you find a pattern of voting in those races?

Mr. SESSIONS. Oh, yes, sir.

The CHAIRMAN. In other words, they were all voting that way where the ballots were changed?

Mr. SESSIONS. That is correct.

Senator KENNEDY. Let the record show they all voted for Howell Heflin, too, and we are delighted with that.

The CHAIRMAN. Well, he is a wonderful man, but that has got nothing to do with it here.

Mr. SESSIONS. He got about 90 percent of the vote.

The CHAIRMAN. Go ahead.

Mr. SESSIONS. Everybody, I think, was voting for Senator Heflin.

Senator KENNEDY. That is right.

Senator HEFLIN. Just keep it up. [Laughter.]

Senator BIDEN. I might add, with no changes. [Laughter.]

Mr. SESSIONS. I do not believe there is any change on his.

Mims Shelton, who is 43——

The CHAIRMAN. After this, we will move on to something else. Go ahead and finish that and we will move on.

Mr. SESSIONS. All right, sir.

He advised he did not observe either Albert Turner or Earl Ford witness his ballot, whose signatures as witnesses are on there. He said he observed his ballot and stated he did not recall making any changes.

And there is one name marked out—I believe it is Harrison—and voted for McMillan in that case. Otherwise, he already voted for the slate candidates. He had already voted for Sentzer Howard, John Ward, Wilbert Turner, and Tululah Nelson, rather than Kinard, Billingslea, and so forth.

Cleophus Shelton testified; he is age 38. In his statement to the FBI, he stated he marked his ballot and sealed it in the envelope. Shelton stated that the ballot was returned to Perry County by Albert Turner.

And he observed his ballot, and I believe he is talking about Mims or—this is Cleophus Shelton. He observed the ballot; it had one name crossed out. It had Eddie Perry's name crossed out.

He said he did not scratch out or cross out any of the names on the ballot, but he did not recall for who he voted for, except he was positive he did not make any changes on the ballot.

The CHAIRMAN. I do not think we need to go into any more.

Let me ask you this now: Are those typical of the matters that caused you to prosecute this case?

Mr. SESSIONS. Yes, Mr. Chairman.

The CHAIRMAN. And those had been investigated by the FBI?

Mr. SESSIONS. Yes.

The **Chairman**. And the evidence was brought to you?

Mr. **Sessions**. That is correct.

The **Chairman**. And as district attorney, was it your obligation, then, when the FBI found this fraud to go forward and prosecute?

Mr. **Sessions**. It certainly was. It was something we had been requested to do by an official grand jury in that county, too, 2 years before.

The **Chairman**. The official grand jury in the county?

Mr. **Sessions**. Yes, sir.

The **Chairman**. Now, Mr. Sessions——

Senator **Biden**. Mr. Chairman, before you go on, and I promise I will not interrupt you again, but so my colleagues can plan, I in no way wish to suggest that the chairman curtial his questions.

But after the chairman finishes his questioning, could we then revert to a 10-minute rule so that my colleagues and yours who——

The **Chairman**. I think we can do that.

Senator **Biden**. But you go ahead with yours. You are the chairman.

The **Chairman**. Well, I have another appointment, a matter coming up on the floor. I have got to leave and if you do not mind, I thought I would get through and then turn it over to the 10-minute rule.

Senator **Biden**. Take your time, but after that, if we could go to a 10-minute rule.

The **Chairman**. Thank you.

Mr. Sessions, the original information and the evidence you received regarding voter fraud in Perry County came to your office from the district attorney whose jurisdiction included Perry County.

Would you tell the committee when the district attorney contacted you and exactly what transpired at that time?

Mr. **Sessions**. Essentially, he contacted me on the Friday—I believe it was the Thursday prior to the election, and advised me about the problems. We contacted the Department of Justice and authorized a minimal investigation, a preliminary investigation, involving really just an observance of the post office would be conducted.

I am not sure, in fact, that that preliminary investigation would even require Department of Justice approval because it is a preliminary step. At any rate, we did. The courthouse was observed. The ballots were listed so that you were able to determine which defendant mailed which ballot.

Senator **Biden**. Mr. Chairman, on that point so it does not get lost, in a letter sent to Mr. Sessions it was suggested by counsel for the committee that—on this point, I just want to make sure I am not misrepresenting you.

You said thereafter you and Craig DeSanto, Chief of the Election Fraud Branch of the Department of Justice, discussed actions to be taken by your office to assist in an investigation of the absentee ballot fraud.

You suggested, and DeSanto agreed, that your office would apply to the Inspector General's Office of the Postal Service for a mail cover to mark absentee ballots which Turner had mailed.

Are we talking about the same thing now here?

Mr. **Sessions**. Yes. Subsequent to that, I have talked with Mr. DeSanto. He says he knows we talked about the mail cover. He does not recollect whether I told him in advance that we wanted to do that, but he approves it and it was within my authority as a U.S. attorney and it is just a matter of how the investigation would be conducted.

Senator **Biden**. Well, just for the record, in a memo, subject, Albert Turner, to Gerald E. McDowell, Chief of the Public Integrity Section, from DeSanto, he says, and I quote:

> These things were done by Mr. Sessions on his own and without consultation with the Public Integrity Section.

Is that a different issue?

Mr. **Sessions**. Which things?

Senator **Biden**. These things which are—

> Advised during 24 hours he had received information, evidence from reliable sources, to the effect that Albert Turner and an associate named Hogue had collected several hundred ballots which they had either fraudulently opened or reviewed or which they had actually completed themselves.
>
> Based on this information, Sessions requested and obtained visual surveillance of the Bureau of the Post Office in Marion, AL, where these ballots were supposed to be mailed for transmission to the county registrar.
>
> This surveillance revealed that both Hogue and Turner appeared as predicted and that they deposited between them literally hundreds of absentee ballot envelopes. Apparently, the Bureau took surveillance photographs of the activities of these two men while they were in the post office.
>
> The envelopes were visually examined by the postal inspector, but were not opened. They were sent forward to the Elections Board for tabulation. These things were done by Mr. Sessions on his own and without consultation with the Public Integrity Section.

Mr. **Sessions**. Well, that is a surprise to me. I was not that certain about it myself as to what we had done. My assistant told me that everything was done after talking to Mr. DeSanto.

And Mr. DeSanto, in my last conversation, indicated that he was aware of the surveillance of the post office but he did say he did not think he was aware of the mail cover.

Senator **Biden**. Well, what I would like to do is submit for the record——

Mr. **Sessions**. I do not have that firm a recollection as to whether or not—I do not believe I personally talked to him, but my assistant was in charge of that.

Senator **Biden**. Well, when my turn comes, we can talk about the subpoena, too. I will submit these for the record when it is an appropriate time.

Thank you, Mr. Chairman. I just wanted to make sure we were talking about the same thing.

The **Chairman**. Thank you.

Now, I offer for inclusion in the record a letter from District Attorney Johnson to U.S. Attorney Sessions, dated September 28, 1984, which states:

> Dear Mr. Sessions: This letter is to confirm our telephone conversation of August 31, 1984.
>
> As I told you in that conversation, my office has received several complaints of irregularities in regard to the upcoming election on Tuesday, September 4, 1984. These complaints range from improper casting of absentee ballots to possible fraud and reidentification.
>
> The most serious allegations concern interference with absentee balloting, including fraudulent receipt and marking of ballots. The large number of absentee ballots

requested by voters in this county—in excess of 600, with 7,857 registered voters—creates the possibility that fraudulent absentee ballots may make a significant difference in the results of the election.

My staff has looked into the allegations and their reports indicate a need for an extensive investigation into the voting process in Perry County. My office does not have anywhere near the manpower to conduct such a large-scale probe.

Additionally, I feel it would be best that an independent agency from outside the county conduct the probe so as to avoid any possible hint of favoritism or partiality. Therefore, please consider this letter to be an official, urgent request for all possible assistance in conducting this investigation.

I cannot overemphasize the importance and the urgency of this request, for without the help of your agency, my office cannot actually investigate all the allegations and possible ramifications without a thorough investigation, however. The results of this election will continue to be showered in accusations and acrimony.

My office staff has prepared a report specifying the evidence uncovered so far and these reports will be made available upon request to aid your evaluation of the seriousness of this situation.

Please contact me with all possible dispatch regarding this case, as time is of the essence.

Now, that was from District Attorney Johnson to you?

Mr. SESSIONS. That is correct.

The CHAIRMAN. Now, Mr. Sessions, there has been an allegation that the prosecution of the *Perry County* case was a selective prosecution and that during your tenure as U.S. attorney, you have failed to prosecute other cases of voter fraud.

How do you respond to this allegation?

Mr. SESSIONS. Mr. Chairman, that is not correct. I believe I said once that we had no other complaints of any significance while I was U.S. attorney. In fact, I have checked with the FBI and found that we had one case in a county which involved eight people, an allegation of vote-buying, and eight people were interviewed by the FBI several years ago and they were not able to develop it into a case.

Those people were white, I understand, almost all of them, if not all of them. This is the only other thing that came up. During this trial, the defendants were publicly attacking us all over for not conducting investigations, but Mr. Hank Sanders, who was a partner in the law firm that tried the case, testified before the House committee that also heard testimony on this case.

Mr. Sanders said "we have never asked for a criminal investigation," and his State legislative district includes Perry County, but his law firm is involved in campaigns throughout that area.

The CHAIRMAN. Mr. Sessions, did your investigation into the voter fraud allegations at any time interfere with the voters' right to vote or any other aspect of the election process?

Mr. SESSIONS. No, sir. All of this took place after the election, so that it would not have affected the election, except for the surveillance at the post office the day before.

The CHAIRMAN. Mr. Sessions, there has been an allegation that you showed——

Mr. SESSIONS. Mr. Chairman, I will say I understand that an FBI agent did go by a campaign headquarters the day before the election and observed the vehicles that were there.

This is a building, not Mr. Turner's house, as I recall. This was the building where the ballots were supposed to have been collected.

The CHAIRMAN. Mr. Sessions, there has been an allegation that you showed insensitivity to elderly voters by busing them to grand jury proceedings 180 miles away. How do you respond to that allegation?

Mr. SESSIONS. Mr. Chairman, that is shocking to me. We had subpoenaed, I believe, 20-some-odd witnesses to come to Mobile. Some of those witnesses were elderly. The Sheltons, as I read their names—they were young, but a number of the other witnesses were elderly.

They are really not familiar with Mobile. They live closer to Montgomery and Birmingham. Probably, a lot of them have never been to Mobile. And my assistant was concerned about how—how they could find their way to the Federal courthouse, which you cannot find easily.

And he discussed with a number of people what to do, so it was decided that a bus would be chartered, or somebody suggested that. A bus was chartered and it was set up at the Marion town square and the people were told they could come to Marion and get on the bus and would be brought to Mobile, and that is what was done purely for their convenience.

The CHAIRMAN. Mr. Sessions, it has come to the attention of the committee that certain comments have been attributed to you. Mr. Sessions, would you tell the committee if any of the following comments were made by you, are they accurate, and in what context were they made?

"The National Council of Churches, the NAACP, SCLC, and PUSH are un-American organizations with antitraditional American values."

Mr. SESSIONS. Mr. Chairman, the best I recall, that took place like this. My former assistant, Thomas Figures, who is black—his office was right across the hall from mine for 4 years.

I went over and I chatted in his office and philosophized, I called it, a number of times, and I was over there regaling about the National Council of Churches. I am a United Methodist and we fund them and my money goes to them, but I have complained about them.

And I was making this point, as I recall this conversation, and I said, you know, when an organization like the National Council of Churches gets involved in political activities and international relations that people consider to be un-American, they lose their moral authority and ability to function, or to speak with authority to the public because people see them as political.

And I also barreled on and said that that is true; the NAACP and other civil rights organizations, when they leave the basic discriminatory questions and start getting into matters such as foreign policy and things of that nature and other political issues—and that is probably something I should not have said, but I really did not mean any harm by it.

I certainly do not think of the National Council of Churches, and certainly not the NAACP, as being an un-American organization. The National Association for the Advancement of Colored People—that organization has, without question, done more than probably any other organization to promote racial progress in the South.

I have seen it; I have seen how far we have gone in a little over 20 years, and it has been remarkable.

The CHAIRMAN. And you attribute that largely to the NAACP, the progress made?

Mr. SESSIONS. Well, they were obviously one of the major organizations in it, and I respect that organization without——

The CHAIRMAN. Now, here is another: "I thought those guys," referring to the Klan, "were OK until I learned they smoked pot." [Laughter.]

Mr. SESSIONS. That was a silly comment, I guess you might say, that I made. What happened was we were investigating the hanging and death of a young black man named Michael Donald.

Michael Donald had done nothing more than go to the 7-Eleven store down the street and was walking home, and two klansmen, Henry Hayes and Tiger Knowles, stopped him, threw him in the car, drove him across Mobile Bay and out in the woods, brutally murdered him, hit him, murdered him, cut his throat, brutalized him.

He fought and wrestled and tried to get away. They brought the body back and hung it in a tree in Mobile. That was the very night that a jury had been hung and failed to return a verdict of guilty in a case charging that a black man had killed a white policeman, and the Klan was offended, apparently, that there was not a conviction of the black man.

So that statement was made, I know, in the presence of Barry Kowalski, who came down from the Department of Justice Civil Rights Division to prosecute the case. And my assistant, Thomas Figures, was the lead person in our office, but I did work on it and was reading the report and saw that the Klan had left the meeting and gone out and smoked pot, and I thought that was really kind of, I do not know, bizarre.

Maybe the joke—I was trying to think of how to analogize it. Maybe I was saying I do not like Pol Pot because he wears alligator shoes. All of us understood that the Klan is a force for hatred and bigotry and it just could not have meant anything else than that under those circumstances.

That is the very thing we were doing at that time was prosecuting that case. I insisted that the case that eventually developed against one of the klansmen be sent to the State court and tried there, despite our desire to be involved in it, because Alabama had the death penalty or life without parole.

It was a horrible thing, and it really pains me to think that that comment—and I understand that Mr. Kowalski was very upset that it would be used to suggest I favored the Klan in some way.

The CHAIRMAN. Another statement that is alleged: "Black people are the children of white people."

Mr. SESSIONS. Mr. Chairman, I just—that is not correct. I have not said anything like that.

The CHAIRMAN. You deny that.

Next is——

Senator HEFLIN. What was that statement? I did not understand that.

The CHAIRMAN. "Black people are the children of white people," and your answer was what?

Mr. SESSIONS. I do not know what that means or how it could have been said. It appeared to me to be some sort of racial slur, but I do not know—I did not say that.

The CHAIRMAN. Another is, speaking to a black attorney, "You ought to be careful as to what you say to white folks."

Mr. SESSIONS. That is not correct, Mr. Chairman. I was in the office with Mr. Figures and we were chatting and a secretary came in. Some passing comments were made and Mr. Figures made a cutting comment to her.

I thought that his comment was in bad taste. Mr. Figures—and he and I talked to this and he has told me this himself. He said, you know, one of the things I get in trouble about is I will make a joke and people take it seriously, and we had discussed that before.

And I told him at that time, I said, you ought to watch what you say to folks; that hurt her feelings. And that is the way that went down.

The CHAIRMAN. "You know the NAACP hates white people; they are out to get them. That is why they bring these lawsuits, and they are a commie group and a pinko organization as well."

Mr. SESSIONS. Mr. Chairman, I do not recall saying anything like that. I will admit that I am pretty—in my office, in talking to people that I am associated with, I am loose with my tongue on occasion, and I may have said something similar to that or could be interpreted to that.

I do not believe I have ever specifically—it would be inconceivable that I ever specifically referred to the NAACP as an un-American or commie organization, even kidding. I mean, I may have referred to my church, the Methodist Church, as probably a bunch of pinkos, maybe. But that is an awful thing to say, and it is not true.

The CHAIRMAN. I want to ask you this question.

Mr. SESSIONS. All right.

The CHAIRMAN. People are people, and all people have equal rights. Have you intentionally made any slurring remarks about black people to indicate that they are inferior or anything of the kind?

Mr. SESSIONS. No, sir. I do not tell racial jokes. I do not do that kind of thing. I do not use racially derogatory terms; I do not believe in that.

The CHAIRMAN. Mr. Sessions, it has also been alleged——

Mr. SESSIONS. Mr. Chairman, you know, as I said, these comments that you could say about commie organization or something—I may have said something like that in a general way that probably was wrong.

But as to specifically saying these kind of things, I do not believe anybody would say I said that.

The CHAIRMAN. Mr. Sessions, it has also been alleged that you have referred to the Voting Rights Act as an intrusive piece of legislation, and that blacks and whites could have solved their own problems.

Would you explain to the committee what you meant by those remarks, if you made them at all?

Mr. SESSIONS. Well, I do believe that the Voting Rights Act is an intrusive piece of legislation, but I do not believe—and I have seen, and I am absolutely certain of this, that racial progress could not have been made in the South without the power of the Federal courts and the Federal Government.

They would not have worked their problems out by themselves; there is no question about that. And the judges, and so forth, took a great deal of abuse, and maybe sometimes they can be criticized legally for exceeding jurisdiction.

But I believe that the Federal courts, I believe that the Federal Government, forced progress——

The CHAIRMAN. The effect of what you are saying, then, is it may be intrusive, but it got good results. You feel it got good results?

Mr. SESSIONS. Yes; that is correct.

The CHAIRMAN. Mr. Sessions, it has been suggested that you have found fault with requests to institute civil rights actions against candidates for vote dilution. How do you respond to this allegation?

Mr. SESSIONS. Mr. Chairman, I became U.S. attorney almost the day, or within a few weeks of a big lawsuit being filed against the city of Mobile challenging its large form of government and they were fighting over vote dilution, vote dilution being the situation in which you have an at-large election, primarily, and blacks are unable to win a spot on a council; say, a city or county council.

And the blacks may have 45, 48, 49 percent of the vote, but they cannot get enough to elect even one of the three, four, or five members of the governing board. And the Department of Justice was intervening, and intervened in a number of those cases and would file lawsuits suing whole counties and naming all the public officials, and that kind of thing.

And I questioned a number of the lawyers who would come down and seek my signature on the documents to file them, and the wisdom of it. But, in truth, as I have seen more of those cases—I signed one a few weeks ago in a county, in a city in my district, in the northern part of the district. The black people had 49 percent of the vote in that city. They had never elected a councilman or a mayor.

They had college graduates running against people with no degrees. They have just absolutely been shut out of the form of government. I was provided a good memorandum of law and I looked at it and it appeared to me to be justified, and I was pleased to sign that.

It is a serious thing, however, for the Federal Government to come in and to sue a county and say we are going to change the form of government that you have been living with for 20 years.

And under the rules of civil procedure, a person who signs his name to a pleading best be sure that he is in conformity with it and believes in it or he is not authorized to sign it.

The CHAIRMAN. Mr. Sessions, during your tenure as U.S. attorney, it is alleged that you took voting cases away, as well as civil rights cases, from Mr. Thomas Figures, an assistant U.S. attorney in your office, because be was black.

Would you please explain to the committee the circumstances surrounding this allegation?

Mr. SESSIONS. Mr. Chairman, when I became U.S. attorney, Mr. Figures was handling all, or at least most of the civil rights cases. I remember distinctly, and I do not think he would dispute it, that I talked to him; called him into my office and told him, Thomas, I want you to continue to handle civil rights, and these are almost my exact words to him.

I told him that I did not want there to be any change in the enforcement of civil rights law. I said I do not know much about those laws; I never handled them when I was an assistant. I want you to do that; I want you to keep me posted on anything that we might do in the area of civil rights that is wrong or shortsighted. Let me know so I can discuss it and correct it.

I told him I might not agree with him, but I wanted him to let me know. I wanted him to handle those cases and to work them and to be my eyes and ears in that area. My full intent was that he would handle every one of those cases.

I have found a file of those cases, and for the last 3 years about 90 of those cases were presented to my office and only 10 of those did not go to Mr. Figures. However, I joke about it; the FBI assigns cases sometimes in our office.

Every case that came to my office that I received, I referred to Mr. Figures. There were about 10 that did not go to him. That upset him, and I saw why it did, and he talked to me about it.

I went to the FBI agent who handles primarily civil rights cases, and to his supervisor, and told them that every civil rights case was to go to Mr. Figures. Now, basically, what happens is when a report of a civil rights case is prepared, the agent goes out to investigate.

He will get a complaint; we may not even know about it. He will get the complaint and he will go out and conduct an investigation. He, not being a lawyer, wants to know if he has done enough, so he will come in and talk to one of our assistants.

And almost invariably until, I guess, 1984, they were going to Mr. Figures, and he would tell them no further investigation required. And then the file would be sent to the Department of Justice Civil Rights Division, and every report is sent there.

We do not have the power to decline a civil rights case; that has to be done in the Department of Justice. But I guess the point I am making is that, on occasions, if Mr. Figures was not there, or for any other reason, an agent might go to another attorney in my office and talk to them about the case, and they would say no further investigation required.

The CHAIRMAN. I think the essence of it is did you deprive him because he was black from handling civil rights cases?

Mr. SESSIONS. No. As a matter of fact, I assigned them to him. When the report would then come down, it would name the assistant U.S. attorney who had originally commented on the case, and if it was someone other than Mr. Figures, and it said no further investigation required—invariably, in every case, if that happened, I would still refer the report to Mr. Figures and tell him that he was the one to read the final report and to review it.

The CHAIRMAN. Mr. Sessions, there have been allegations that your office failed to properly investigate two suicides which occurred at local jails and a shooting into a house which had been recently viewed by a prospective buyer who was black because there was not sufficient evidence to request an investigation.

How do you respond to these allegations?

Mr. **Sessions**. Mr. Chairman, that is not correct. There was a case involving a suicide of a white man in a jail north of Mobile. It was mentioned in the newspaper, and Dr. Gilliard, who is a dentist and prominent member of the school board in Mobile, and head of the local NAACP—he contacted, I believe, the FBI or maybe Mr. Figures and asked for an investigation.

A complete investigation, I believe, was done.

Senator **Biden**. Excuse me, Mr. Chairman. Would you let us know who is making these allegations? I have not heard these allegations before. Who are the ones that are making these allegations, the last couple——

The **Chairman**. They were sent to the committee by various people.

Senator **Biden**. I see.

The **Chairman**. And I felt we should inquire.

Senator **Biden**. No, no; I am not suggesting you should not. I am not making those allegations. I do not know who——

The **Chairman**. I felt we should inquire about it, since the complaint was made.

Senator **Biden**. Yes, good. I just wondered who was doing it.

Mr. **Sessions**. In that case—and this was where we had a problem, Mr. Figures and I did. He was not happy that the agents were talking to other people before they talked to him. He felt it was unfair for him to have to read a report that another assistant had already commented on.

At any rate, we had that discussion, I believe, about that case and I agreed to handle it. We had evidence, and the report indicated that this white man who hung himself, that he had called his girlfriend that day and indicated he was going to end it all. There was no basis for further investigation.

The other case involved a hanging in Baldwin County. A black man hung himself. A fireman who was in the jail at that time heard it; ran back there, heard a noise, and went back there and saw him and tried to get him out, but it was too late.

That case was the same situation. Mr. Figures and I talked about it and I reviewed that and talked with the Department of Justice about it, the Civil Rights Division. They reviewed it. Further investigation was required, which I concurred in, and that case was eventually declined.

The **Chairman**. Now, what about the shooting into a house which had been recently viewed by a prospective black purchaser?

Mr. **Sessions**. That was an interesting case, and I thought that case was aggravated, in a way—not in a way; I thought that was a serious case, a shooting in a house. What happened was in the town of Evergreen, a black policeman had been shown a house in a white neighborhood by a white real estate agent.

That was observed, apparently, by the neighbors and the next night, or shortly thereafter, buckshot was fired through the doors and through the windows, and substantially damaged the house. And the real estate agent got a threatening call about saying you do not show blacks houses in this neighborhood.

The FBI did a real fine investigation of that case, and brought the results in and the agent presented it to a fairly new assistant in my office at that time, Gloria Bedwell, and she thought that it did not merit further prosecution.

That was before an official report was prepared. The report came in, oh, maybe 2 or 3 weeks later, or whenever. And it came across my desk and I read it and I thought that I could discern from the report who I believed it was that fired the shots.

I also, as a professional, realized there was very little hope that you could prove it, but I was concerned about it. I sent it to Mr. Figures, as I recall, and we may have even talked about it.

But I ended up talking with the agent personally, and I have talked with the lawyers in the Department of Justice about it personally. I believe it has been declined now, but I expressed my concerns about it because I think that was a particularly aggravated crime.

I believe a person has the right to live where he wants to live, and I do not care what color he is. And that is a realistic problem in a community like this town. There is a heavy minority of blacks in that town, and if that kind of thing is allowed to go on uninvestigated, it could deny people the right to live where they desire.

Senator **BIDEN**. Did you say that at the time?

Mr. **SESSIONS**. Yes.

Senator **BIDEN**. So you recommended pursuing the case?

Mr. **SESSIONS**. We discussed it seriously. I talked with the agent who handled it. What else could be done? I volunteered to the lawyer at the Department of Justice to subpoena everybody in the neighborhood. Normally, they come down and conduct the grand jury in a civil rights case and they have to make difficult decisions on whether we really have a chance of making this case. Is it worth a week in Alabama on this case when I can make a more important one over here?

I said, well, I will conduct it, if you want me to. But we agreed that there was very little likelihood that anything could shake out of it.

Senator **BIDEN**. I am trying to get to the bottom line. When it was all done, before you closed the folder did you say we should pursue this case or we should not pursue this case?

Mr. **SESSIONS**. I agreed with Mr. LeFevre in the Department of Justice—I believe it was Mr. LeFevre—that the case should not go forward.

The **CHAIRMAN**. You did not have enough evidence to go forward?

Mr. **SESSIONS**. There was no evidence. Everybody said they did not see it. There was somebody there that I had a gut feeling might have done it. It would have been an awful long shot to call in all these neighbors who had denied it in their statements already to try to see if they would change their testimony just because they were under oath, and I doubt that they saw it. It was done in the middle of the night, I think, and probably nobody saw it.

The **CHAIRMAN**. Mr. Sessions, there have been some concerns regarding the hiring practices of your office. Would you tell the committee what procedures and criteria you use in determining who will be hired by your office?

Mr. **SESSIONS**. Well, our office is a very high quality law office and we need as good people as the best law firms in town, and so that is what we seek. As far as clerical employees go, we hire from the Federal Register only. We are required to hire in that fashion.

And as far as attorneys, I hire those on an individual basis, and hire the best people, I think, available for the job.

The CHAIRMAN. You follow the Federal Register for the clerical people and use your judgment to hire competent attorneys.

Mr. SESSIONS. Yes, sir.

The CHAIRMAN. Is that the answer?

Mr. SESSIONS. That is correct.

The CHAIRMAN. Mr. Sessions, there has been an allegation that you stated that a prominent civil rights attorney was a disgrace to his race. How do you respond to this allegation?

Mr. SESSIONS. I understand that that statement has been made, and I recall a conversation in which that was mentioned and I may have—I believe the statement was I had said maybe he is, and that is really disturbing to me.

I suppose—I do not know why I would have said that, and I certainly do not believe that. The lawyer in question is one of the finest lawyers in the country. I have defended him.

I have heard people say he has gotten some fees, hundreds-of-thousands-of-dollar fees, or maybe even nearly $1 million in one, for prolonged litigation that he and his firm had been involved in, and they won and they get this money.

And I have defended him. I said he was representing those cases at a time when he did not get paid anything. And he is a fine—one of the best lawyers in the country, and it really pains me to think that people would—that I would be quoted as saying that and I do not know how I could have said it.

The CHAIRMAN. You did not say it?

Mr. SESSIONS. I will not say that. The person who said that I said, "well, maybe he is," is a person I respect and——

The CHAIRMAN. Well, did you mean a serious charge against him to that effect or a spirit of levity, or what was it?

Mr. SESSIONS. I cannot recall. As I recall it, I was in the library. He came in and mentioned something like that and it was brief and——

The CHAIRMAN. Well, did you say that against him, if you did say it, because he was a civil rights lawyer, or somebody made the remark and you chimed in and you would have made it anyway whether he was a civil rights lawyer or not?

Mr. SESSIONS. I did not initiate it. According to what he says, he mentioned it and I made some comment like, maybe it is—maybe he is. And I do not know why I would say that.

The CHAIRMAN. Were you trying to please him, whoever it was?

Mr. SESSIONS. No. I think he was a lawyer that would be very impressed with this lawyer, and I certainly would not have done that.

The CHAIRMAN. Mr. Sessions, it has been alleged that the FBI, under your supervision, developed a hit list of prominent Democratic politicians and businessmen in an effort to develop evidence against these individuals for receiving illegal payoffs.

Would you tell the committee if there was such a hit list, and what are the circumstances surrounding the FBI investigation that would lead to such an allegation?

Mr. SESSIONS. Mr. Chairman, that arose from what is now an ongoing criminal investigation. It was one of the most amazing things I have ever seen in my practice of law——

The CHAIRMAN. You need not disclose any ongoing information of any cases.

Mr. SESSIONS. All right, sir. This was all public. About, oh, less than a month ago, I guess—about a month ago, we had conducted an investigation and an individual and his lawyer called a press conference and his client stated himself that he had participated in the extortion of a Mobile businessman.

They attacked me; they attacked the Mobile County district attorney, who is a Democrat. They stated that the money that he had extorted from this businessman, who was cooperating first with the district attorney, and later the FBI got into it—that the money that was extorted from him by this man was supposed to go to a black county commissioner, and that the reason I wanted to indict this man who called the press conference was because I was afraid to indict the black county commissioner because they would accuse me of racism and I would be embarrassed when I came up here to the committee. It was a tremendous shock.

That investigation, by the way, is under the supervision of one of the finest assistant U.S. attorneys in the country, who clerked for the chief judge of the Eleventh Circuit Court of Appeals, Judge John Godbold; is the granddaughter of a judge on the old fifth circuit.

And I was aware of this investigation; she was supervising it. And I have—after this came out—gone to the agents and I asked them, did you all say anything like that, in just about that tone of voice. And they have flatly denied that, and I know each one of those agents, or two FBI's and one State investigator who had 28 years with the FBI.

The State investigator has sent up an affidavit flatly denying that, and they said only one name——

The CHAIRMAN. Do you want to read that from the State investigator?

Mr. SESSIONS. All right, sir. In pertinent part, he said they went to Mr. Owens' residence. As Mr. Owens stated in his press conference, he had been tape recorded.

They went to his residence, played him the tape recording and said, OK, we want you now to approach these people and wear a recorder like this businessman did and talk to them, the people—let me read you what Mr. McFadden said.

He says:

> I went to Gurney Owens' residence to solicit his cooperation and obtain corroborating evidence against the county commissioner for whom he claimed to have demanded and accepted payments. At no time did we ask him to approach any person other than the county commissioner, nor did we suggest or request that he do anything improper.
>
> No names were mentioned to him other than the name of the county commissioner in question.

He says, "I am thoroughly familiar with this ongoing joint political corruption investigation," and it was started by, as I say, the Democratic district attorney in Mobile and the FBI merely joined in it.

He says there were no hit lists or political targets.

The CHAIRMAN. Now, I have a letter here, and I am about through. This letter is addressed to me from Kenneth P. Bergquist, Department of Justice, Office of Legislative and Intergovernmental Affairs.

> DEAR MR. CHAIRMAN: At the request of your staff, I have undertaken an inquiry into an allegation made by a Mr. Gurney Owens that he was presented with a list of 20 individuals by a Federal Bureau of Investigation agent in Mobile, Alabama, and coerced into entrapping such individuals.
>
> This allegation is utterly without foundation and it is an affront to the integrity of the FBI and its agents in Mobile, Alabama. I have been in touch with Mr. Joseph Mahoney, II, the supervisory special agent of the FBI field office in Mobile, Alabama. Mr. Mahoney has supervisory responsibility for the Gurney Owens case, and informs me that the allegations made against the FBI are baseless.
>
> Mr. Mahoney also informs me that the special agent in charge of the Mobile office, Mr. Carroll Touchey, has publicly denied Mr. Gurney Owens' allegations.

Now, Mr. Sessions, I think that completes my inquiry. I have had our investigators here, headed by Mr. Duke Short, to investigate this matter carefully. Regardless of which party I belong to, it is my duty to try to get the facts and the truth in a case.

We have investigated thoroughly and gone into this matter from every angle, and the investigators have concluded that you are well qualified for this position. I think the record shows that you are.

You have practiced law; you have been assistant district attorney; you have been district attorney. You have made a good record, and the investigation reveals that you did nothing in connection with this investigation or fraud except what you should have done.

It was your duty as district attorney to investigate fraud—fraud against whites, fraud against blacks. The law does not acknowledge any color. The only reason for having the courthouse is to do justice, and if it does injustice to blacks or whites or anybody else, then there is no use to have a courthouse.

That investigation was made and they feel that you did your duty in investigating these fraud cases. You admit you made some statements here, maybe, that probably were lacking in wisdom. But on the other hand, I do not consider those sufficient to disqualify you to be a Federal judge.

So from our investigation and what I found out, I expect to support your nomination.

I have another matter now I have got to get to the floor on, and I wish to apologize to these other members here for not stopping sooner, but I felt it my duty, since we have gone into this matter thoroughly and I wanted every facet examined, to present this to the committee.

Now I will ask Admiral Denton if he will take the chair and call on the able and distinguished ranking member, Senator Biden.

Senator BIDEN. Before you leave, Mr. Chairman, so we can set the rule here, I feel that since you have been here over 30 years and are chairman of the committee, if you want to take 1½ hours and us to take 10 minutes, that is fair, but let us set a 10-minute rule now before you leave.

The CHAIRMAN. Well, I just said we will take 10 minutes apiece from now on.

Senator BIDEN. Good, OK, great. That is all I need. Thank you, Mr. Chairman.

The CHAIRMAN. There is only one on this side and there are four over here, so you will get four times the time.

Senator BIDEN. We might catch up then. [Laughter.]

Mr. Chairman——

The CHAIRMAN. I am not sure you will. [Laughter.]

Senator BIDEN. Mr. Sessions, let me state to you and to my colleagues the context in which I view this hearing. A, it is a hearing, not a trial. B, the person whose competency is being decided upon is not the State of Alabama; it is not the Senator from Alabama; it is not the President of the United States. It is you.

I find, as a person who lives in a border State, that there is as much prejudice in the North as I have found in the South. I do not think the State of Alabama is on trial here, as has been at least potentially suggested.

Clearly, not in this hearing room, the State of Alabama—it may be on trial in some newspapers in Alabama, but it is not on trial here, or the question of the hearing. My distinguished colleague from the State of Alabama, Senator Denton, is clearly, as it relates to this committee, not—this has nothing to do with Admiral Denton, as far as this committee is concerned.

And lastly, it clearly has nothing to do with the President of the United States of America, other than it goes to the question of whether or not his judgment was sound and he made a sound recommendation. You are the recommendation; you are here, and I would like to begin my questioning.

There is a lot of territory to cover and I will be back at this on several occasions because, like the chairman, I have at least 1½ to 2 hours' worth of questions, but I will—I do not want to hold my colleagues up—give everybody a chance and we can keep rotating this.

But let me suggest to you that you made a comment at one point when the chairman asked you a question on whether or not you had made a particular statement. You said, that is disturbing to me.

I hope you understand why some of the assertions that have been made under oath by Justice Department employees are also disturbing to us, at least disturbing to this Senator.

Mr. SESSIONS. I understand.

Senator BIDEN. What I would like to start with is not, to try to put this in focus at least for me—one more comment. It is true that part of the investigative team of this body, of this committee, has reached the conclusion that, in fact, you are well qualified.

It is a very qualified man who did the investigation, Mr. Duke Short, and other majority staff members. But there was another investigation, a simultaneous investigation hand in hand, that has not reached that conclusion. It has not reached a final conclusion until your testimony is finished whether or not you are qualified, but it has clearly not reached the conclusion that you are qualified to be on the bench, and that was the investigation done by the chief minority counsel investigator, Reggie Govan, whom you have spoken to a number of times.

So, again, for the record, I do not want people to think that there is one investigative team that has a uniform point of view on this subject. Part of the investigative team of this committee apparently has reached a judgment. The other part—the jury is still out, as they say in our business.

Now, let me get to my questions in the 7 or 8 minutes that I have left, and I would like to go through the questions about these comments which, to some in the audience, may be—we may be nitpicking as to whether or not you used a phrase which will come up here and again; you used the word "nigger," or whether or not you used the word—suggested that the NAACP was less than reputable, or any of these questions that have been raised or will be raised again.

Keep in mind that what we are, in fact, required to look at is not merely whether or not you meant what you said, but whether or not you said them. We have a long history in this country and in the recent past, just to emphasize the point, of Mr. Earl Butz and Mr. James Watt who, at least in part, felt they should resign because of inappropriate comments, whether they meant them or not.

The jokes that Mr. Watt made about people or the jokes that Mr. Butz made, assuming they made them—and I believe they did, based on their own assertions—do not go merely to whether or not they meant them, whether or not they believed it, but whether or not it was appropriate.

You are before this committee for the single most sacred job that could be entrusted to anyone in this Republic, and that is to be a U.S. Federal judge. And so not only whether you meant something, but the appearance and the propriety, your judgment, your maturity, and your temperament, all are at work here. That is why these comments are of consequence.

Now, when you indicated that you mentioned to Barry Kowalski, a Civil Rights Division attorney from Washington who spearheaded the prosecution of the klansman hanging of a black man, the report of the klansman smoking marijuana, which you said you read in the presence of—I understand at that moment when you made the statement that was referenced before, Mr. Kowalski and your assistant, Mr. Figures, was also in the room. Mr. Figures is a black man, is he not?

Mr. SESSIONS. Yes.

Senator BIDEN. Yes; and the statement that you were allegedly to have said was "those bastards; I used to think they were OK, but they are pot smokers." Now, I could see how someone could say that humorously.

That does not mean you are defending the Klan, but do you not think it was insensitive to say that in front of a black man, after a black man had just been brutally beaten and hung? Do you not think that was insensitive, with a black man sitting there, to say that?

Mr. SESSIONS. Senator, my impression of the situation was that it was so ludicrous that anybody would think that it was supporting the Klan that he would not be offended by it.

Senator BIDEN. Well, let me put it another way. How about if we were sitting at a cocktail party, you being a loyal son of Alabama, and I sat there and said, you know, all those—you know, someone said something and I said, gee, I used to think they were all right; I did not realize all those southerners were such bigots.

Would you sit there and go ha, ha, ha, that is a funny thing? Are you not tired of hearing that?

Mr. **Sessions**. Yes; but I am not sure I would vote against you if you were nominated for a Federal judge based on that. [Laughter.]

Senator **Biden**. Would you be offended?

Mr. **Sessions**. Oh, I probably would say, well, you yankees are all the same.

Senator **Biden**. OK.

Mr. **Sessions**. It was something in a familial relationship that could have led—I would not have been offended if he had said, why are you making such a stupid statement, but he did not.

Senator **Biden**. Well, you know, it seems to me that there is kind of an emerging pattern of those kind of statements. If that was the only thing you said, I would not vote against you.

Let us move on to the next one.

Mr. **Sessions**. I understand everything that I have said is—I may not—go ahead.

Senator **Biden**. Let us move on to the next one. In November 1981, a guy named Dan Wiley, a former Democratic Mobile County commissioner who defeated Colonel Carter by eight votes—a man whose campaign you had run—you got into a challenge of the election in the State and Federal courts on the basis of absentee ballot fraud, not as a U.S. attorney but as counsel for the defeated candidate.

It is suggested that you stated to Mr. Wiley at the conclusion of a particularly contentious hearing back in 1981, "Do not worry," or "do not be too happy"—he could not remember the precise phrase—"John," meaning Archer, "will be watching you and the nigger," referring to the only black commissioner in Mobile.

Did you make a statement like that or that precise statement?

Mr. **Sessions**. Senator, I did not. That is an absolute false statement.

Senator **Biden**. All right, let us move on to the next one.

Mr. **Sessions**. Mr. Wiley—are you going to talk about—he attacked me publicly at that time and said that I had met at Mr. Archer's house and had conspired to get him after I became U.S. attorney.

Senator **Biden**. Well, I mean, you can talk about that if you want. I am just asking the questions, like the chairman raised them.

Mr. **Sessions**. I understand.

Senator **Biden**. They are statements made to us, and you are denying——

Mr. **Sessions**. I want to point out that it is not true, and that was not true. I had never been to Mr. Archer's house.

Senator **Biden**. This has nothing to do with the house, but at any rate, yesterday I asked counsel to——

Mr. **Sessions**. You know, Senator Biden, this is the first I ever heard that, I think; I am sure it is. That would be curious because I do not believe at that time—that I would get the nigger? Is that the statement?

Senator **Biden**. That is the quote.

Mr. **Sessions**. Presumably——

Senator **Biden**. I accept your statement. I mean, you know, you said no.

Mr. **Sessions**. My point is there was not a black county commissioner at that time. The black was only elected later. I do not know what that statement—where it came from.

Senator **Biden**. OK. My time is up. Let me just end by suggesting to you that I want to come back to a number of the statements made, and then move on to the voting fraud questions, and then on to the hiring practices.

But to keep with my own request for the 10-minute rule, I will cease at this moment.

Senator **Denton** [presiding]. It would be my turn, but in deference to the fact that the chairman did take a long amount of time and trying to even that up, I would defer to Senator Metzenbaum.

Senator **Metzenbaum**. Thank you, Mr. Chairman.

Mr. Sessions, when did you know you were first a candidate to be a judicial nominee?

Mr. **Sessions**. I would say it would be in the spring of 1985.

Senator **Metzenbaum**. Spring of 1985?

Mr. **Sessions**. It was a pretty long time before it ever got to the point of a nomination and——

Senator **Metzenbaum**. Between August of——

Mr. **Sessions**. Or at least the nomination came fairly quickly.

Senator **Metzenbaum**. When did you become U.S. attorney?

Mr. **Sessions**. August 1981.

Senator **Metzenbaum**. Between that date and the time that you knew you were going to be nominated, how many people did you hire while you were U.S. attorney, and how many of them were black?

Mr. **Sessions**. I believe the answer to that is none.

Senator **Metzenbaum**. None?

Mr. **Sessions**. And how many I hired, I am not real sure; maybe 12, 15.

Senator **Metzenbaum**. You hired 12 to 15 people, no blacks?

Mr. **Sessions**. Well, it would not have been 12—about 12, yes.

Senator **Metzenbaum**. Did you interview some blacks for attorney positions or for nonattorney positions?

Mr. **Sessions**. Yes; we interviewed blacks for nonattorney positions, and I have interviewed a black for an attorney position.

Senator **Metzenbaum**. And you did not hire him?

Mr. **Sessions**. Did not hire him.

Senator **Metzenbaum**. Pardon?

Mr. **Sessions**. Did not hire him. You are talking now before the spring, before I was mentioned for the judgeship position?

Senator **Metzenbaum**. Yes.

Mr. **Sessions**. Yes.

Senator **Metzenbaum**. Did you hire some after you knew you were going to be a nominee?

Mr. **Sessions**. We hired two black clerical people after that.

Senator **Metzenbaum**. Was there some causal relationship? Did it occur to you that that might be a question that would come up at this hearing?

Mr. **Sessions**. I have for some time felt that we needed to do a better job about hiring blacks, Senator Metzenbaum. It looked bad to me. Let us take the two areas, and they are real distinct—the clerical people and the lawyers.

I feel like that I probably have been—I can plead guilty to not being enough affirmatively oriented with the attorneys. But let us talk about the clerical people. Our clerical people are hired from a list from the Office of Personnel Management, and they send the names down.

The people are tested, and they were interviewed and selections were made at that time. We have never passed over a black on a list for a white candidate below a black, and I do not really recall having a black on the list that qualified.

We have to hire from the top three names sent from OPM; they come out of Birmingham. I specifically called OPM myself a couple of years ago and asked why we were not getting qualified blacks on the list.

My administrative officer has talked about it, too.

Senator METZENBAUM. As a matter of fact, you did not hire any blacks until June 1985 and September 1985. Is that not when you——

Mr. SESSIONS. I would not say the month, but that is about right. The first black that we hired, Senator, had applied as a career employee. She was with the IRS and she applied as a career transfer, and we heard good things about her and we hired her. And I am not even sure we saw a list at that time.

Senator METZENBAUM. Let me ask you a question.

Mr. SESSIONS. Yes, sir.

Senator METZENBAUM. You seem to be an honest man. You do not hire any blacks until you know you are going to be a nominee. You refer to the NAACP and the ACLU, which are bringing the civil rights cases in your area, as being pinko or un-American, or words to that effect.

You bring some cases; you prosecute some blacks for vote fraud; you lose.

You are a black person. Would you like to submit a case to Judge Sessions in the U.S. district court, if you are confirmed, or would you not feel that you could not get justice from that judge?

Mr. SESSIONS. Well, they certainly can, Senator, and they would get justice.

Senator METZENBAUM. That is not my question; that is not my question. I am not saying to you whether you think they can. I am asking you now about the litigant, about that person who is in the courtroom.

Knowing your background, knowing what you have said about—what did you say about a white lawyer who brought a case? "I had mentioned to him that I had, in fact, heard that one of the judges had referred to one of the white lawyers for the plaintiffs as being a disgrace to his race for doing it. I said I did not know whether it was true, but, you know, I had heard that that was said."

"And what was Mr. Sessions' response?" He said, "well, maybe he is."

Now, my question to you is not whether you are a racist or not whether you feel that strongly about the NAACP or the ACLU that has brought civil rights cases. My question to you is, Could any black person come into your court and feel that they had a chance of getting justice before you?

Mr. SESSIONS. You make them feel they are going to get justice by treating them with respect.

Senator METZENBAUM. You can treat somebody with all the respect in the world and be polite. We have got some people that I have seen around Washington who are extremely polite, but that does not mean that I would want to submit a case to them having to do with a black person or any other member of a minority group, and that is the issue.

The issue before us is not whether you will mete out justice fairly; it is whether those people who come before you have a right to believe that they are going to be able to get justice.

Based upon your record, I tell you frankly I have difficulty. I do not know you; I have never met you. I have never known much about you at all except what I read about you.

I know that black people are here very much concerned about your confirmation and indicating their opposition. So I ask you, as a fair-minded person, would you not, as a black person, be concerned about appearing before Judge Sessions?

Mr. SESSIONS. The thing that disturbs me about your question is what if—and I think the record will bear this out, I handled the hiring of employees like you would have handled the hiring of employees, and was bound by the list send out by OPM.

And I hope that this committee could bring that out so black people would not feel it was a deliberate thing. The second employee that was hired came out on the list, too, in the top three, and was actually No. 1 and we hired her. There was never another instance in which that situation happened.

Senator METZENBAUM. Now, you are saying to us that between August 1981 and June 1985, no black appeared on the list. You get advised—when did you tell me, some time in 1985? When was it? When did you learn you were——

Mr. SESSIONS. I just would——

Senator METZENBAUM. When would you have learned——

Mr. SESSIONS. I would think it was in the spring of 1985.

Senator METZENBAUM. Spring of 1985. All of a sudden, 2 months later, a black shows up on the list and you hire them, and then 3 months after that another black shows up. What concerns me is what happened earlier. Why did you not get blacks on the list? Why did you not ask about it?

Mr. SESSIONS. Senator, I really want you to know that I do not know how the list is prepared in Birmingham. It is prepared off a computer list. I do not know the people there. They send the list down and we are required to hire off that list, and it is pure chance that they showed, I assume.

Senator METZENBAUM. But as the U.S. attorney, you could name your own assistant U.S. attorneys, could you not?

Mr. SESSIONS. Yes.

Senator METZENBAUM. And you did not name one black, did you?

Mr. SESSIONS. I did not; I did not hire a black as assistant U.S. attorney—now, I can talk about how I made those decisions on the attorneys one by one.

Senator **Metzenbaum**. How did you make the decision not to hire any blacks? Were there not any capable black young attorneys around or older attorneys that you could have asked to join your staff?

Mr. **Sessions**. I am not sure that there are—I believed I hired the best people for those positions.

Senator **Metzenbaum**. That is not my question.

Mr. **Sessions**. I understand that

Senator **Metzenbaum**. Were there not any——

Mr. **Sessions**. I do not know of any that have made application to my office that would meet the qualifications of the people I hired.

Senator **Metzenbaum**. Did you have some black attorneys who made application to your office?

Mr. **Sessions**. The only—there is one that I interviewed; he had moved to Mobile from Birmingham. At that time, we were not hiring and I did not, of course, hire him then. I contacted him, I believe, after Mr. Figures resigned and called him back for a further, indepth interview.

I have a stack of résumés like this that come out of law schools from all over the country, from, you know, the fine law schools. I was asked did any of those—were any of those blacks.

They invariably do not say their race, but occasionally you would see something like an Afro-American organization that they were a member of and you could suppose that. I do not believe any of those were anything other than law school graduates, and I have not hired a law school graduate.

In our area, the U.S. attorney salaries are good and the lawyers—you can hire somebody who has proven themself in the field, in the practice. I like them young and enthusiastic, but we have never hired anybody that did not have some experience.

And I do not recall a black attorney applying from our area who had any experience; there were none that did that.

Senator **Metzenbaum**. My time is expired, Mr. Chairman.

Senator **Denton**. Thank you, Senator Metzenbaum.

Senator Heflin.

Senator **Heflin**. When you took over as U.S. attorney, which would have been, when, 1981?

Mr. **Sessions**. August 1981.

Senator **Heflin**. In the first year of the Reagan administration after President Carter had left office, Mr. Thomas Figures was an assistant U.S. attorney, a Carter appointee to the U.S. attorney's position, I assume?

Mr. **Sessions**. Yes, sir; Mr. Kimbrough.

Senator **Heflin**. And I gather you kept him?

Mr. **Sessions**. Yes, sir. All the people that were there were kept.

Senator **Heflin**. How many other blacks were there that were part of that U.S. attorney's office when you took over?

Mr. **Sessions**. Well, Mr. Figures was a part of the attorney staff; that is 20 percent of our five attorneys which was all we had. And there were no black clerical employees.

Senator **Heflin**. There had not been any black clerical employees from the Kimbrough appointment?

Mr. **Sessions**. No; Senator Heflin.

Senator **Heflin**. So during your administration you have made five assistant U.S. attorney appointments?

Mr. **Sessions**. I guess we have made that many over the time.

Senator **Heflin**. And how long did Mr. Figures stay with you?

Mr. **Sessions**. He stayed with me for almost 4 years, within 1 month of 4 years. Senator, I would say parenthetically he one time talked to me; he was in a depressed mood and he talked about quitting. And I asked him not to quit, that I wanted him to remain on the staff.

I told him that he was contributing a lot to his community and asked him to think about it over the weekend, and he came back in and did decide to stay.

Senator **Heflin**. Now, I want to ask you about this instance wherein someone has made a reference to one of the judges who referred to one of the white lawyers for the plaintiffs in a case as being a disgrace to his race for representing, I suppose, blacks from what I have ascertained so far.

What was the context of this statement? Would you give me more of the details of this?

Mr. **Sessions**. I have wrestled with that to try to recall that instance because I respect the lawyer referred to a great deal.

Senator **Heflin**. Well, as I understand it, the lawyer who has been referred to is Mr. James Blacksher.

Mr. **Sessions**. Yes, sir; I know members of his firm, and that kind of thing, but I was sitting, as I recall, in our small library. And I cannot swear to this, but I was sitting in there reading a book and the attorney came in and——

Senator **Heflin**. Who is the attorney?

Mr. **Sessions**. Mr. Hebert from the Department of Justice.

Senator **Heflin**. Hebron?

Mr. **Sessions**. Hebert.

Senator **Heflin**. All right, Hebert.

Mr. **Sessions**. Not quite Hubert, where I am from.

And Jerry came in and——

Senator **Heflin**. Jerry is Mr. Hebert?

Mr. **Sessions**. Jerry Hebert; excuse me.

And he came in and mentioned something about Jim Blacksher and that he was a great lawyer, and I think I agreed. I said, you better watch out; he will clean your clock. I did not know whether they were litigating against each other or not.

And he mentioned something about disgrace to his race. I recall that, and I believe I was sitting there with a book here and he came in and sat at the end of the table. And I made some comment like—actually, well, I guess I would have said that or he would not have, you know, said it.

I guess I will not disagree with him, and I do not know why—I cannot imagine why I would make that comment.

Senator **Heflin**. Well, according to the testimony in the deposition I have, Mr. Hebert supposedly is saying that he heard that one of the judges had referred to one of the white lawyers for the plaintiff as being a disgrace to his race for representing a black plaintiff.

Now, did he say who the judge was?

Mr. Sessions. I do not recall. The thing that really I do not recall was saying that a judge said that. I recall the phrase "disgrace to your race" being referred to Jim Blacksher; I recall that.

Senator Heflin. Well, the statement, as it has been related to us, was that one of the judges—I suppose he is mentioning it in Mobile—had referred to Mr. Blacksher as being a disgrace to his race because he represented black plaintiffs.

Lawyers represent all kinds of people; they are supposed to represent the people. Now, maybe some lawyers have specialities in certain fields.

But you do not recall that he mentioned a judge and a judge's name?

Mr. Sessions. No, sir; I do not recall that. I do not think he did; at least he certainly did not mention a name. I think I would have followed up if—it may have been—he may have thought it was implicit or something in the conversation.

Senator Heflin. Mr. Hebert has you replying—he said, "well, maybe he is," meaning maybe he is a disgrace to his race. Now, I want to be fair to you and fair to everybody concerned here.

Is it your best recollection that you made that statement, or what did you say? Obviously, in advance of testifying here today, you have not been told what Mr. Hebert has testified to. And I am sure you have not had a lot of time to reflect on it.

Mr. Sessions. Right.

Senator Heflin. What, do you recall, was your answer to Mr. Hebert when he made such a statement?

Mr. Sessions. Well, I heard it because somebody who had been interviewed in Mobile told me they had been asked if I had said that, so I heard it some time ago. My first reaction was that I did not say it.

Then I began to think about it and, Senator Heflin, this was the way I recalled. I was busy. Jerry came in and said some real good things about Jim and I said, you better watch out; he will take you to the cleaners, and if you enter into a consent agreement with him, you better be prepared to adhere to it because he knows what the meaning of the words are.

And he says, well, he is a great guy, and that kind of thing, and he is well respected. But it so vague I do not want to say—if Jerry said that the judge said that, then surely he would remember that.

But as I recall, trying to recollect on it, the best I could recall was that I said, well, he is not that popular around town; I have heard him referred to as a disgrace to his race.

He handled the *City of Mobile* case and many other things, and I do not—I cannot remember. It would have been a passing comment like that, and the context of it was such that I do not know.

But I will tell you this: I am just being as honest with you, Senator Heflin, as I can possibly be, and I have such respect for Jim Blacksher that having that raised—and suggesting that I believe something like that is really painful to me.

Senator Heflin. My time is up.

Senator Denton. All right. I will yield to you, Senator Simon.

I will ask, in pursuit of Senator Heflin's questioning, which I know to be entirely sincere—I am just curious; I do not want to lose the gist of what was going on.

When he walked in, you say you were reading a book and he diverted you from that, and your original reference, and, as I understand it, the context in which you keep talking to him about Mr. Blacksher, was in a favorable context.

In other words, you said, in terms of his ability, you better watch out; he will clean your clock and, yes, he is very good in the civil rights kind of case, and so forth. Is that true or false?

Mr. **Sessions**. Yes, sir; that is true, and there are people that oppose him. You know, my recollection was that I thought he was asking about him as a reference, what kind of lawyer.

But if he says it the other way, I remember—the only thing I remember is that the phrase was used in that conversation.

Senator **Denton**. Well, in the book which I have just received—I am sure my assistants have been looking at it; I think it is the one from which Senator Heflin is quoting. When Mr. Hebert was asked by Mr. Govan, his questioner, did you understand Mr. Sessions to be joking, Mr. Hebert said, I could not tell; to be honest with you, I could not tell.

Senator Simon.

Senator **Simon**. Mr. Sessions, I think Senator Metzenbaum summarized the concerns that some of us have. We believe—at least some of us on this committee believe that the Justice Department, including the Attorney General, simply are not as sensitive in the area of minority rights as they ought to be.

We are concerned with some of the nominees that they are sending to us, and in this area of sensitivity, let me just read this one statement. This is Mr. Govan of our staff in an interview here with Mr. Hebert:

> So your conclusion that Mr. Sessions is reluctant in his support for some of the civil rights initiatives of the Department of Justice is based upon comments that he made to you that he did not think it was appropriate to be filing the challenge to the Mobile at-large electoral seat?
>
> Mr. **Hebert**. I do not know if it was just Mobile. I think, you know, just on conversations I have had with him over a 4- or 5-year period that is the impression I get.

Then I will skip a few lines, but I do not think I am taking anything out of context.

Mr. Hebert says, "The general impression I get when we talk about racial questions is that he is not a very sensitive person when it comes to race relations." That is the area, frankly, that does concern some of us.

If I can ask more specifically—and let me just add Mr. Hebert does say that in some areas you have been good. For example, Mr. Hebert said, "I have gotten the impression that he thinks that gerrymandering for racially discriminatory reasons is a definite way that you can harm black voters."

But here is another part of this interrogatory here: "We were talking about the NAACP and the ACLU"; this is Mr. Hebert talking.

Then Mr. Govan: "Were they involved in either of these cases?" Mr. Hebert: "I believe that the Mobile voting cases that Mr. Blacksher handled were, in part, financed by the NAACP Legal Defense Fund, although I am not certain what arrangements they had. It was in the context of my talking to Jeff about the NAACP that he made some comments about the NAACP and the ACLU."

"What were those comments?" "He said he thought they were un-American." "Did he give any reason for his belief?" "He said that he thought they did more harm than good; they were trying to force civil rights down the throats of people who were trying to put problems behind them."

Then I am going to skip a little here, but again I do not think I am taking anything out of context. "He thought they were un-American. I remember him using that word. I remember him saying that they were either Communist-inspired—again, he has made that comment to me two or three times, so I do not know that it was during that conversation that he used that word or whether he used, like, 'un-American' at that point or maybe at a later conversation said they were."

Now, have you used that description of the NAACP and the ACLU? I guess that is the first question.

Mr. SESSIONS. All right, let me talk about that. First, I briefly scanned the document and I did see the part about the previous question you asked me. I do not feel that I can say I concur in these statements of Mr. Hebert.

I will say this: we——

Senator KENNEDY. Was that a no or a yes? Did you ever make such——

Mr. SESSIONS. Some of that, I do not believe I said in the context that he stated, as he stated it right there.

I want to answer your question——

Senator SIMON. Maybe not in that context, but have you used that description of either being un-American or Communist about either the NAACP or the ACLU?

Mr. SESSIONS. The one time that I recall using the word "un-American" was the conversation I previously mentioned to Mr. Figures about—was with Mr. Figures in his office, and I do not recall saying that in any conversation with Mr. Hebert.

Now, I do think the issue—I like to discuss things. I am open; I like to discuss with liberals better than I do with conservatives. You get a—I mean, I just enjoy the free flow of ideas.

I think one time Jerry and I had a conversation where we talked about the civil rights situation and how it stood today, and I made the comment that the fundamental legal barriers to minorities had been knocked down, and that in many areas blacks dominate the political area, and that when the civil rights organizations or the ACLU participate in asking for things beyond what they are justified in asking, they do more harm than good. We discussed that situation.

Senator KENNEDY. Would the Senator yield?

Senator SIMON. Yes.

Senator KENNEDY. What is that? What action are they exceeding that justifies—what sort of actions are you talking about that would warrant the labeling of un-American or Communist?

Mr. SESSIONS. I do not think they are warranted in being labeled that. They did, for example, enter the vote fraud case that I did not think was a racial case. They had at least four lawyers, I believe, involved in that, and—some really significantly bad statements were made about that case that were not true.

And I think that was not a legitimate civil rights issue. It was made into a good political issue, but it was not a legitimate civil rights issue.

Senator SIMON. But I guess we are concerned with the whole question of sensitivity of attitude when the phrase "force civil rights down the throats of people," which he says you used—do you recall using a phrase like that?

Mr. SESSIONS. I do not. I do not recall it, unless it was in the context of them demanding things that were not justified beyond the traditional understanding of law. But I do not have a specific instance in mind

Senator SIMON. Now, this Mr. Hebert——

Mr. SESSIONS. I think we all can agree that the NAACP can, on occasions, take positions that are not justified.

Senator SIMON. Mr. Hebert says you used——

Mr. SESSIONS. They are advocates, and we all push for our point of view.

Senator SIMON. Is Mr. Hebert a responsible person?

Mr. SESSIONS. I believe so; I thought so. I liked Mr. Hebert, and I do like him, and——

Senator SIMON. Can you tell us who Mr. Hebert is?

Mr. SESSIONS. He is a career attorney with the Department of Justice Civil Rights Division, and his area of expertise is in these voting cases and he has been involved in a number of them.

The *City of Mobile* case that I had talked with him about and argued with him a little—of course, I did not really know the law and I was just egging him on a little. But that case was reversed by the U.S. Supreme Court.

Senator SIMON. But when he says that two or three times he heard you use the phrase "un-American" or "Communist" or something like that about the NAACP and the ACLU, it sounds like he is not just doing this off the top of his head; that he is a responsible person.

Mr. SESSIONS. Well, I do not believe that he would say that I made direct references to the NAACP as a Communist organization.

Senator SIMON. What about the ACLU?

Mr. SESSIONS. Not that one either. I know——

Senator SIMON. He has told us this under oath.

Let me shift to another, because I know my 10 minutes will be——

Mr. SESSIONS. I really do not know how that could come about, or the context of the conversation.

Senator SIMON. During the questioning by Senator Metzenbaum you testified that you did not hire any black attorneys. What percentage of your district that you serve as U.S. attorney is black in population terms?

Mr. SESSIONS. I believe it is 67 percent white.

Senator SIMON. Fifty-seven percent?

Mr. SESSIONS. Sixty-seven.

Senator SIMON. Sixty-seven percent.

Senator KENNEDY. White.

Senator BIDEN. White or black?

Mr. SESSIONS. White. I had somewhere a paper on that. I believe that is——

Senator SIMON. But just roughly, is that 67 percent white or black?

Mr. SESSIONS. White.

Senator SIMON. Sixty-seven percent, so that 33 percent of the people in that area—did it bother you at all that you did not have any representation on your staff of that 33 percent?

Mr. SESSIONS. Well, the whole time I was U.S. attorney, we did. Mr. Figures was there the entire time. That was one out of—when I came, for 2 years we continued with just five lawyers, and so 20 percent of our staff, legal staff——

Senator SIMON. But those you hired——

Mr. SESSIONS. Of those I hired, I did not; that is correct.

Senator SIMON. I thank you, Mr. Chairman. My time is up. Thank you.

Mr. SESSIONS. Although the lawyer population would be much less. There would be—you know, percentagewise, there are a great deal more white lawyers than they are proportionate in population.

Senator DENTON. Gentlemen, we have been through a round. He has been there 2 hours and 20 minutes. I have not asked a round of questions. I would like to take 10 minutes. With your permission, can we take a 10-minute break?

Senator KENNEDY. I would like to, with all respect—I have been here most of that time.

Senator DENTON. You have not had a round yet, Senator Kennedy?

Senator KENNEDY. I have not had a round of questions.

Senator DENTON. Go ahead.

Senator KENNEDY. Thank you.

Just coming back to the affidavit, you are familiar with the affidavit or the sworn testimony?

Mr. SESSIONS. It came out; somebody showed it to me within an hour of the hearing.

Senator KENNEDY. Well, it was just taken yesterday.

Mr. SESSIONS. I understand that.

Senator KENNEDY. But you are familiar with these particular areas that are being referred to now by Senator Simon?

Mr. SESSIONS. Well, this thing about me saying it three times or something to that effect, I was not——

Senator KENNEDY. Well, have you ever said it? Let us go back, then. In this sworn testimony, Mr. Hebert said, in referring to the NAACP and the—"he said he thought that they were un-American."

Have you ever, in your recollection, used the word "un-American" with regard to the ACLU or the NAACP?

Mr. SESSIONS. As I believe I stated, yes, before you came, which was I said when they involved themselves in promoting un-American positions or positions—my words were considered un-American, and particularly foreign policy issues and that sort of thing. They lose support, yes.

But I have not, I do not believe——

Senator KENNEDY. Wait a minute. What foreign policy matters are you talking about?

Mr. SESSIONS. Oh, the sanctuary movement and Sandinistas, you know. I give that kind of stuff——

Senator KENNEDY. You call them un-American. What particular matters do you remember that so offended you that you called the organizations un-American?

Mr. SESSIONS. First, there would not be a specific—I do not believe that—it will be stated that I have said I consider the NAACP un-American. I do not believe anyone has stated that.

Senator KENNEDY. Did you use the word "un-American" in describing the activities of the NAACP and ACLU?

Mr. SESSIONS. Yes; as I stated——

Senator KENNEDY. The answer is yes, you have, as I understand it, and you used it in reference to their foreign policy positions. That is what I gather from your statement, or am I wrong?

Mr. SESSIONS. It really came out—as I stated before, we were talking about the National Council of Churches and their involvement in organizations. I am a member of the Methodist Church and Mr. Figures is a churchman. We were raising——

Senator KENNEDY. That is not my question about which church you belong to.

Mr. SESSIONS. Would you let me—I do not know, Senator. I do not want to take your time up, but I do not think you understand the context and I would need to answer it again.

What happened was that I said the National Council of Churches hurts itself when it gets involved in issues that people consider un-American because it is outside its realm of religious responsibility.

And as I said, I blundered on and said that the NAACP does some of the same stuff when it gets outside of legitimate civil rights issues and involved in political issues not related to civil rights.

Senator KENNEDY. Well, what are the positions taken by the National Council of Churches that you feel are un-American?

Mr. SESSIONS. I really do not feel that you would say that it is un-American to support the Sandinistas, say. I do not——

Senator KENNEDY. Did they take that position?

Mr. SESSIONS. No. They are generally supporting Third World revolutionary theology, I understand. But I do not have any problem with that. It is just a figure of speech to say that——

Senator KENNEDY. That they are un-American is a figure of speech?

Mr. SESSIONS. I do not believe that that is un-American, Senator. I said it was considered un-American by people.

Senator KENNEDY. And what does the ACLU——

Mr. SESSIONS. It does hurt their credibility to raise funds and that kind thing if they are involved in——

Senator KENNEDY. Well, I would like to be more specific. You know, you have got a pretty broad brush there when you talk about foreign policy. You know, some people think that the activities of Corazon Aquino 4 weeks ago were revolutionary.

Mr. SESSIONS. Right.

Senator KENNEDY. Some people would say that, and today she is legitimately the ruler of the Philippines. Now, we do not hear—labels used as un-American and Communist activities are not used lightly, I think, in our society; not used lightly, and there must have been something of the ACLU or the NAACP that warranted, at least, your making that statement or allegation. Otherwise, you say I never made it.

You can have it either way, but you have got to have it, and what I am interested in is trying to find out whether the activities which you describe—what were the activities of the ACLU or the NAACP, both organizations, evidently, in terms of this sworn testimony, that you felt warranted the words of being un-American and Communist-inspired.

Mr. **Sessions**. I have not said that they were un-American. I explained that I said that they take positions that are considered un-American. They hurt themselves; they lose credibility.

And many people do think that some of the positions they take are against the national interests of the United States.

Senator **Kennedy**. OK.

Mr. **Sessions**. Now, I agree that is debatable, and I agree that people with good conscience can support Aquino and the Sandinistas.

Senator **Kennedy**. Mr. Hebert said, "He said that he thought they did more harm than"—he said, referring to you, "that he thought they did more harm than good when they were trying to force civil rights down the throats of people." That is Hebert's sworn testimony.

That is the context that he understood that you were using—it was in that context that you used the word "un-American," when the NAACP and the ACLU were, in the words of Hebert—that you said they were trying to force civil rights down the throats of people who were trying to put problems behind them.

Mr. **Sessions**. And I have stated earlier on that question—I had a conversation with Mr. Hebert and we discussed the general civil rights situation in our country and in our area, and I enjoyed very much talking with him in a very relaxed manner.

And I recall saying that civil rights organizations, when they demand more than is legitimate, it hurts their position. I do not feel like that—I think, as I said earlier, the civil rights organizations, the Department of Justice and the Federal courts had to force integration down the throats of those who resisted it because it would not have happened any other way. Federal intervention was essential in the South.

Mr. Chestnut and I disagree on a lot of things, but one of his themes is that prejudice still exists and it does; not legal as much, maybe; there may be some.

Senator **Kennedy**. Well, Mr. Hebert, evidently, in referring to this conversation, said, "In the context of talking about it at that conversation we had, he mentioned," meaning you, "he thought they were un-American," just quote, unquote, about the organizations.

Mr. **Sessions**. That was a conclusion he made. I do not think that, and I do not believe I ever said that. He must have concluded that from that conversation.

Senator **Kennedy**. Well, he said, "I remember him using that word and I remember him saying that they were either communist-inspired—he made that comment to me two or three times."

Mr. **Sessions**. I do not recall that. I do not believe I said that, not in any specific manner; no, sir.

Senator **Kennedy**. Well, in any specific reference, I do not quite know—your comment and your testimony is that you did not say it?

Mr. **Sessions**. I may have said it in the context that I said about the National Council of Churches. In a legitimate context, I may have used that word and Mr. Hebert may have believed that I believed those organizations are that way, but it is not true.

And I do not think that he would testify that I ever specifically said that the National Council of Churches or the ACLU is Communist, because I do not believe that and would not say it.

Senator **Kennedy**. Communist-inspired—it is just why he would come to that conclusion, a career attorney, in the labeling of the NAACP and the ACLU.

Senator **Biden**. If the Senator would yield for just a second?

Senator **Kennedy**. Yes.

Senator **Biden**. On that point, on page 38 of the testimony Mr. Hebert said, "He said he thought they were un-American." So he obviously—maybe you do not, but rather than characterize it, he clearly said you said that.

Mr. **Sessions**. I would deny that.

Senator **Biden**. That is all.

Senator **Kennedy**. And your response is that you did not?

Mr. **Sessions**. That is correct.

Senator **Kennedy**. Did you ever make any comments with regard to the Voting Rights Act?

Mr. **Sessions**. As brought out earlier, I said it was an intrusive piece of statutory authority.

Senator **Kennedy**. I just want to——

Mr. **Sessions**. I concede that I have said that, but I believe, as I said earlier, that without it—Senator, there were counties in Alabama when that bill was passed that no blacks voted in.

Something had to be done. It is an intrusive piece of legislation. In the South, every change in government, no matter how small, has to be cleared. But it was a necessary piece of litigation; I support it.

Senator **Kennedy**. My time is up.

Senator **Denton**. All right. Well, let me have my 10 minutes, then, since that will round it out, and then let us take a break.

I do not know everything about Mr. Sessions. I could learn something at this trial—I mean at this hearing, trial, that makes me think he is not qualified. But I understood the basic elements of the charges against him, and they are charges, that he was wrong in joining the *Perry County* case and bringing that to trial, and that he is at fault because, having brought it to trial, he lost.

I will go into that in subsequent questioning, but I do want to ask, Mr. Sessions, do you believe that the prosecution in that case could have been better handled?

Mr. **Sessions**. Yes, sir, I believe it could have. One of the things I think I failed in doing—we only have eight lawyers in the office. I only had 2 lawyers assigned to the case, and at one time there were 11 lawyers filing motions on behalf of the three defendants.

At trial, there was at all times three fine lawyers for each defendant doing a superb job, and I feel like that I left my assistants outgunned and I wish that I had participated personally in the trial of the case or gotten another—at least one more lawyer to help them.

Senator DENTON. So in a word, you were not that personally deeply involved in the prosecution of that trial?

Mr. SESSIONS. No, sir. The case was assigned to Assistant U.S. Attorney E.T. Rolison. It is his responsibility to prepare the case and handle it. We brought in another assistant, Gloria Bedwell, to assist.

The case—the first week it was tried in Selma; I did not go to Selma. I talked to them over the weekend and they were having problems. The defense, I could tell, was doing an excellent job.

And after the initial real good testimony the first 2 or 3 days, they had some bad witnesses, and so I went up to try to help them, try to get the FBI to coordinate things, and I generally was there.

I sat in during closing arguments because I thought that our office was being challenged and I would be there with my assistants when that was——

Senator DENTON. Well, for what it is worth, I do believe that you should have, beyond a reasonable doubt, consented to prosecute that case. I believe that you were not that personally involved; that your staff was outgunned because there was national contribution to that situation.

The rest of the case against you here today seems to rest on offensive statements that you made. I would hate to be judged on statements that I made, not necessarily of the nature being ascribed to you, and I would hate to have my colleagues judged on statements I have heard them make under such private conditions as those being attributed to you.

But I will say that I should quote here from this paper. This is an affidavit which talks about the kind of intimidation that might have existed on the other side, and I have got a lot of testimony and evidence to offer in that respect.

Senator BIDEN. Excuse me, Mr. Chairman.

Senator DENTON. Yes.

Senator BIDEN. Affidavits from whom about what?

Senator DENTON. I was just asking from whom.

Do you know what this is, Mr. Sessions—the origin of this which starts talking about "on other occasions, Mr. Chestnut has referred to witnesses in this case as Uncle Toms," and so on? Do you know what that is from?

There are quotations here from the Selma Times Journal. Where does this affidavit come from, or what is it?

Mr. SESSIONS. You may have there a portion of a motion that was filed in court by our office on the issue of whether the jury should be sequestered in Selma.

Senator DENTON. I do not want to delay on that. I will ascertain——

Senator BIDEN. I am just curious about what you are reading from.

Senator DENTON. Sure. I will ascertain for Senator Biden—the quotation from the Selma Times Journal of February 18, 1985, stands on its own, though, and that is attributable. This is attorney J.L. Chestnut, who was on the other side from the prosecution, is that correct?

Mr. **Sessions**. A black attorney, and a very powerful attorney.

Senator **Denton**. Right. Talk about offensive statements—if we are going to judge on that, this is his statement in quotes, "Every nigger that said anything to the FBI is going to be put on the stand," Chestnut said. "They are going to have to say it out in the open where you can hear them and you can see them," he said. "We are not trying to crucify anybody; we are just going to hang out all the dirty linen." That is Chestnut, who is a black attorney, talking.

Now, there is a lot of offensive language there, and there was a lot of offensive language and articles written about this thing. So to imply that this is not something that is beyond this young gentleman here is simply not in accordance with the facts.

I will quote one other statement that Senator Biden, if he does not mind, would not mind my quoting, since they might be opponents in the primary. But this is the kind of thing that we are talking about here.

Here is Governor Cuomo; this is a letter to the editor in the Birmingham News recently. "New York Governor Mario Cuomo's remarks at a recent breakfast to the effect that 'in Alabama, they think nuclear freeze is a dessert,' were uncalled for and beneath the dignity of the highest official of one of our 50 great States." So a lot of that talk goes back and forth.

Now, I believe this young man, by his conduct in his personal life, by his conduct as a U.S. attorney, has done me credit and I am happy to have chosen him as a U.S. attorney. I believe that to the degree that this hearing has dealt with that, he comes off well.

I am still open. I do not know everything about this young man, but I knew enough about him to think he was the best man I could find to nominate for the U.S. attorney job in Mobile. And from what I have heard from him today, I have heard nothing to make me disbelieve that.

I would happen to agree with him. I think that in some cases—after all I have said about the black corporal and the need for the whites to get the kick, and so on, I do believe that in some of the cases there are activists who proceed beyond that which is in their own best interest, which is exactly the way I heard him say it, to get something that is unreasonable.

Do I blame them for that? No; because if they are going to go short of the mark, then they are not doing their job. Sometimes they have got to go past the mark, but when they go past that mark, do they antagonize? Yes. Do they hurt their own cause? I believe so, and I believe that was the context in which Mr. Sessions made his remark, as well as I can understand it.

We stand for 12 minutes—let us come back at 10 minutes after 5.

[A brief recess was taken.]

Senator **Denton**. The hearing will come to order.

Mr. Jerry Hebert, the subject of the last few rounds, quoting an affidavit he submitted, of the Justice Department is in the audience.

Would you come forward, Mr. Hebert? I would like to swear you in. Would you raise your right hand?

Will you swear that the testimony you will give before this committee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Hebert**. I do.

Senator **Denton**. Please sit down.

What is your name?

TESTIMONY OF J. GERALD HEBERT, SENIOR TRIAL ATTORNEY, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. **Hebert**. J. Gerald Hebert.

Senator **Denton**. What is your position in the Department of Justice and how long have you been so employed?

Mr. **Hebert**. I am presently senior trial attorney in the Civil Rights Division of the Department of Justice, assigned to the voting section, and I have been an attorney with the Department of Justice since 1973.

Senator **Denton**. Have you had an opportunity in your position to come into contact with the nominee, and if so, would you explain the circumstances and tell over what period of time that contact took place?

Mr. **Hebert**. I have had an opportunity to come into contact with Mr. Sessions, and it has extended back, I believe, about the last 5 years during his tenure as U.S. attorney for the southern district of Alabama.

I have served as the lead trial attorney for the Justice Department in a number of voting rights cases that have been brought in his judicial district, and I have had occasion in connection with prosecuting those cases to come into contact with Mr. Sessions.

Senator **Denton**. From that comprehensive contact, would you believe that Mr. Sessions would fairly consider any case brought before him by, say the ACLU or the NAACP?

Mr. **Hebert**. I have, Senator, very mixed feelings about my testimony today, and I would like to answer your question, but first explain the reasons for that.

I have—in conversations over the last couple of years, many of which, I understand, have been read into the record in these proceedings, Mr. Sessions and I have engaged in a number of conversations on subjects that touched racial issues and civil rights issues.

At the same time—and those comments are now a matter of public record here, and I stand by those as having been made. But by the same token, I have prosecuted cases that are highly sensitive and very controversial and, quite frankly, unpopular in the southern district.

And yet I have needed Mr. Sessions' help in those cases and he has provided that help every step of the way. In fact, I would say that my experience with Mr. Sessions has led me to believe that I have received more cooperation from him, more active involvement from him, because I have called upon him.

I consider him a friend of mine, more than just a U.S. attorney in the southern district. I call him when I go into Mobile even if I am not there necessarily on departmental business, and he has occasion to call me when he has been in Washington.

I believe that when Jeff Sessions says he is going to do something, he is a man of his word and he will do it. And so if his testimony before the committee is that he would follow the law faithfully, I personally would believe him.

Senator DENTON. Do you think Mr. Sessions enjoys philosophical debate and, as he indicated, is stimulated thereby and sometimes adopts a controversial position in order to stimulate debate?

Mr. HEBERT. I believe yesterday when I testified in the deposition that the word I used to describe him was "engaging," and I think that word accurately describes the way that he——

Senator DENTON. Engaging?

Mr. HEBERT. Engaging.

Senator DENTON. Meaning he likes to engage?

Mr. HEBERT. Exactly. He enjoyed conversation with me. I do not know whether he baits me, but he—when we would have conversations in his office, we would engage in what I would call spirited debate and he would oftentimes take time out of a very busy schedule to spend time talking with me about civil rights cases.

And he occasionally—I think, you know, I described yesterday as well the fact that he has a tendency sometimes to just say something, and I believe these comments were along that vein.

Senator DENTON. In other words, perhaps he enjoys being a devil's advocate sometimes in a discussion?

Mr. HEBERT. I am sure he is no different than many of the rest of us in that respect.

Senator DENTON. Last question: Did you indicate that among the U.S. attorneys that you have to deal with in the South on civil rights cases, you consider him relatively good in that respect?

Mr. HEBERT. Well, I can only speak in terms of my own personal involvement in cases there, but oftentimes we do not receive very much cooperation from the U.S. attorneys' offices and, in fact, we engage oftentimes in some kind of a dispute with a U.S. attorney, an individual U.S. attorney, about a case the Civil Rights Division is intending to bring or is involved in.

In Mr. Sessions' case, that has not been the case. In the two Mobile voting cases that I handled, in the *Dallas County, AL* case and in the *Marengo County, AL* case, I have had occasion numerous times to ask for his assistance and guidance.

I have been able to go to him; he has had an open-door policy and I have taken advantage of that and found him cooperative.

Senator DENTON. Do you think he has prejudice which would harmfully affect those whom he deals with professionally?

Mr. HEBERT. I have had many conversations with him over the last 4 or 5 years, and I really do not know if I am in a position to say one way or the other whether he would or whether he would not.

I am sure he probably feels the same way about, you know, my handling a reverse discrimination case, whether I would feel that a white plaintiff, you know, is entitled to certain relief.

I honestly do not know. I have to stand by the remarks I made yesterday that when he says things—if he says he is going to do something, he is a man of his word.

Senator **Denton**. How many civil rights cases have you prosecuted?

Mr. **Hebert**. Since I started working at the Department of Justice, I have been involved in over several hundred.

Senator **Denton**. Do you consider yourself sensitive on the racial question?

Mr. **Hebert**. Yes.

Senator **Denton**. Do you consider Mr. Sessions insensitive in the same sense?

Mr. **Hebert**. I think that some of the comments he has made and the comments that I testified about yesterday, in my judgment, showed racial insensitivity, and I think I mentioned that to him at the time he made them.

Senator **Denton**. In the sense that you believe that he would do what he says, do you believe he could be a fair and impartial Federal judge?

Mr. **Hebert**. I would hope he could; I do not know.

Senator **Denton**. Do you have anything else you wish to add to your previous statements about Mr. Sessions, any nuances you care to cast on them?

Mr. **Hebert**. The statements that I made yesterday—and the question you just asked me is a very difficult one for me to answer because I am not totally objective in this situation.

I am troubled by the fact that there is an image based on statements that I have made that Mr. Sessions is a racist. I do not really know whether he is or he is not. I probably ought to know, but I do not; I really cannot say.

He has made some comments that show racial insensitivity, but by the same token he has not let whatever philosophy he might have or the comments that he has made affect his ability to do the job as U.S. attorney and to help the Civil Rights Division.

So, you know, I would really have to just give you my opinion about whether or not I think he would or whether he would not. I do know, though, that he is somebody who has been there when we have needed him.

Senator **Denton**. Well, you seem to have said, and you correct me if I am wrong, that in the South you have encountered antipathy to some of your own thrusts of belief, and so on.

So I do not hear you saying that you consider him different in the worst sense than the others with whom you have dealt with, considering your own philosophical position and the thrust of your own purpose.

Mr. **Hebert**. We have had considerable difficulty with several U.S. attorneys in cases we have wanted to bring. We have not experienced that difficulty in the cases that I have handled with Mr. Sessions. In fact, quite the contrary.

Senator **Denton**. Thank you.

Senator Biden.

Senator **Biden**. Thank you.

Mr. Hebert, thank you for coming up. I am not being solicitous, but I, quite frankly, cannot think of a more difficult spot to be in.

Mr. **Hebert**. Neither can I, Senator Biden.

Senator **Biden**. Pardon me?

Mr. **Hebert**. Neither can I, Senator Biden.

Senator **Biden**. And I am not being smart; I mean this seriously. I mean, you know, obviously it is clear to this Senator that you like Jeff Sessions, and it is also clear that you are a man of conscience.

Were this a trial, as some have portrayed it, I would let the defense—the prosecution would rest at this point on your statements. I would just walk away because, at best, in terms of the question relating to whether or not there is racial insensitivity or prejudice, at best it has been damning from faint praise, from this Senator's perspective.

But it is not a trial. This is a search for giving Mr. Sessions and everyone else the benefit of the doubt, so I am going to pursue this a little further.

Mr. Hancock, in his sworn testimony—and by the way, I might say for the record what you have said here is totally consistent with what you said in your statement. I was going to read when my 10 minutes came along page 41 of your statement.

It was asked by Mr. Govan of my staff:

> Have you ever experienced difficulty in cooperation with Mr. Sessions' office?
>
> Mr. **Hebert**. No, no. In fact, I have been able to call up on the phone and ask Jeff if I could dictate a paper to his secretary that needed to be filed within an hour and he has been willing to help me out. That just happened within the last 2 months.

Throughout here, you do not attempt to characterize in a negative context what Mr. Sessions has said or references he has made, as I read the statement. So I just want, for the record, to say that my full reading of your testimony yesterday is totally consistent with what you have said here today.

But on the issue of whether or not Mr. Sessions is one who has been fully cooperative, Mr. Hebert, a colleague of yours, if I am not mistaken—is that correct?

Mr. **Hebert**. Mr. Hancock.

Senator **Biden**. Excuse me. Mr. Hancock, a colleague of yours, has testified that Mr. Sessions has, in fact, not been nearly as cooperative as you have had the benefit of cooperation from Mr. Sessions.

Mr. Hancock, in his sworn statement, said he officially requested an FBI investigation on a voting rights case in—and I yield to my colleagues from Alabama for the correct pronounciation of the county. How do you pronounce that county, Conecuh County?

Mr. **Hebert**. Conecuh County.

Senator **Biden**. Conecuh County, Conecuh County.

Some time later, he called the FBI headquarters to inquire about the status of the investigation and he was told the FBI did not investigate because Jeff Sessions told them not to.

During a telephone conversation with Mr. Hancock, Sessions confirmed that he instructed the FBI not to investigate because "he thought it was a bad investigation and did not agree with it."

To the best of my knowledge, in reading the Federal prosecution handbook here, in fact, that is not something that Mr. Sessions would have the authority to do. Is that correct? Does Mr. Sessions have the authority to countermand an order from the Justice Department for the FBI to investigate, to say do not investigate?

Mr. **Hebert**. Well, that is a matter of departmental policy. I can tell you how typically that policy is enforced.

Senator **Biden**. It would be helpful if you would.

Mr. **Hebert**. We routinely ask the Federal Bureau of Investigation to conduct investigations for us, and we do it in written form from Mr. Reynolds, the Assistant Attorney General, to the Director of the FBI.

A copy of the request goes to the U.S. attorney in whose district the investigation is going to be conducted, so that he is aware of what we are looking into. If the U.S. attorney who receives that request has a problem with the investigation, typically what would happen would be a call would be made to us directly or to Brad Reynolds, in this case, raising whatever concerns there are.

And the incident you are referring to is one that I have personal knowledge of.

Senator **Biden**. And what happened?

Mr. **Hebert**. Well, we had sent the—as Mr. Hancock testified, we sent the request to the Director of the FBI and we called because I think, as I recall, we were concerned that we had not gotten our report back from the agents.

And we found out that, in fact, Mr. Sessions had gotten in touch with the agents and had called off the investigation.

Senator **Biden**. What was your reaction to that?

Mr. **Hebert**. Well, as I recall, we were rather upset about it.

Senator **Biden**. Has that happened many times before in your experience?

Mr. **Hebert**. No; I cannot remember it having happened. It may have happened that I am not aware of, but I have——

Senator **Biden**. Did you draw any conclusions as to why Mr. Sessions had called it off? Was it just that he was new and not particularly seasoned in the job or that he did not have enough inclination to pursue it or he had an animus relating to the parties? Did you draw any conclusions at the time?

Mr. **Hebert**. All I can remember is that the conversation, as I recall, took place between Mr. Hancock and Mr. Sessions, and Mr. Sessions just indicated that he did not think the investigation should go forward.

And I do not remember him giving any reasons for that. He probably——

Senator **Biden**. You understand why I ask the question. In light of your statement that you, in fact—and I am not trying to play a game with you, but in light of your statement that he has been so cooperative, when I read that testimony, I found that somewhat—not suggesting other attorneys in the district of Delaware or anywhere else might not do the same thing, but I found it kind of unusual.

It has been a while since I practiced law, but I found that somewhat unusual, and that is why I ask it relative to your statement about the degree of cooperation.

Let me shift to another question. Were you the Justice Department official who had the conversation with Mr. Sessions relating to there is a judge who made reference to a prominent white civil rights lawyer as a traitor to his race?

Mr. **Hebert**. Yes.

Senator **Biden**. I am not playing, again, a game. Would you, in your own words, tell us about that conversation, to the best of your recollection?

Mr. **Hebert**. Mr. Sessions and I were in his office and we were talking about different judges' handling of cases and their relationships to the attorneys. And in the southern district of Alabama at the time, I was explaining to him the wide difference in the treatment that we had been afforded in two different cases by two different judges.

And in the course of that—the context of that conversation, I mentioned to him that one of the judges had reportedly said, and I still to this day do not know if he said it because I have not had occasion to ask the Federal judge this, but——

Senator **Biden**. Who was the judge?

Mr. **Hebert**. Pardon me?

Senator **Biden**. Who was the judge? Did you tell him the judge's name?

Mr. **Hebert**. Yes; I mentioned to Mr. Sessions who the judge was that I had—and I told him that I do not know if it was ever said.

And I mentioned to Mr. Sessions that, you know, this had been said that a lawyer who handled civil rights cases in Mobile was either a traitor to his race or a disgrace to his race.

Senator **Biden**. And what is your recollection of Mr. Sessions' response or comment to your statement?

Mr. **Hebert**. As I recall, he said, well, he probably is.

Senator **Biden**. Now, did he laugh or did he joke, or did you laugh when he said that? I mean, did you take it as, gosh, he is a witty guy and is this not funny, or did you think, well, gee, I hope you do not mean that, Jeff? What was your response?

Mr. **Hebert**. He smiled, Senator; he smiled when he said it. He did not laugh. He did not have a serious look on his face, but he smiled when he said it. And I said, oh, come on. That is my recollection of the conversation.

Senator **Biden**. Now, with regard to judges, you have been asked to testify to at this hearing whether or not—and you have stated it honestly from your opinion—whether or not Mr. Sessions was racially insensitive, and you said yes, you thought he was.

But then you have also said that he is a man of his word and if he says he is going to do something, he will do it. The problem we have is, once we confirm a Federal judge, he or she is there until death do we part. They are there for a long time—hopefully, a long time for whoever gets confirmed.

Now, were you an attorney bringing a case for the NAACP, on behalf of the NAACP, would you discuss with your clients and/or cocounsel whether or not you should have Judge Sessions recused in a case that you were about to bring because of comments he has made?

Mr. **Hebert**. If I had drawn a judge in a case that I was prosecuting where I thought there was some basis for doing it, I certainly——

Senator **Biden**. Let me be more specific. It is a tough, tough question to ask you. Based on the comments that Mr. Sessions has made to you, in jest or to challenge or in seriousness, whatever the context or the collection of contexts, if you left the Justice Department and were handling a case for the NAACP, a voting rights case, and it came before Judge Sessions, would you not at least raise the question with cocounsel and/or your client that you should make a motion to recuse Judge Sessions on that case?

Mr. **Hebert**. I would certainly raise the issue, absolutely.

Senator **Denton**. Senator Heflin.

Senator **Heflin**. Mr. Hebert——

Senator **Biden**. My time is up; that is the reason I stopped.

Senator **Heflin**. Mr. Hebert, I might say that you are a surprise witness.

Mr. **Hebert**. I am a little bit surprised myself, Senator.

Senator **Heflin**. You were surprised that you came at the time that you did, and I want to delve into how you got here. I think you are also surprised as to what your testimony has been.

Would you tell us if you were scheduled to appear as a witness, or after giving the deposition, was it your understanding that there would be no further testimony on your part?

Would you tell us what your understanding was and the Department of Justice's position relative to this understanding; and if you would, then, tell us what has occurred and how you arrived here today at this time?

Mr. **Hebert**. I think perhaps Senator Biden put his finger on it to some extent in explaining why I am here. When I was contacted by the ABA——

Senator **Heflin**. That is the American Bar?

Mr. **Hebert**. Yes; and asked for my comments about Jeff Sessions, my impression was that they were going to be confidential remarks and that they would go no further than that.

How they got from that point to where we are today is really inconsequential. Later, as things developed and this hearing date approached, I was called by Mr. Govan of Senator Biden's staff last week and asked if I talked to the ABA, and I said I did.

And he asked me what I told the ABA and I told him that I thought that was confidential and that I would not tell him. And I believed at the time and I still believe today that that is departmental policy not to release the details of that kind of communication.

And Mr. Govan indicated he respected that and that he would take it up with Senator Biden and the Department of Justice, if that needed to be done. The next thing that I knew was yesterday I was told about 1:15 that a car would pick me up at 1:45 and that I was to come up to the Senate where I would be questioned about my contact with the ABA.

And I was told to report, which I did, and when I came up, I was sworn and I gave testimony yesterday. And as I said a few minutes ago, I really—I have a very good personal relationship with Jeff Sessions. I have worked side by side with him on some cases in the sense that I have had to go to him for some advice.

And I felt bad about it last night, and I did not do anything about it. I just felt bad about it; that I knew this was not going to help him. But by the same token, I felt that I had done my duty. I had come up to the Hill when I was told to and I told the truth yesterday, as I am telling the truth today.

Today, we had in the Voting Section—apparently, some of our employees were here and they came back this afternoon. And, frankly, it has sort of been a wrenching day for me; I have really felt bad about it.

I had heard a report on National Public Radio this morning about it. And, again, the comments I made yesterday in my deposition, you know, were reported on national radio this morning, not attributed to me by name, but attributed to me in the sense that I knew, you know, Mr. Sessions would have to answer to those, as he rightfully should.

But I felt bad about that, and I was talking with Mr. Hancock late this afternoon and when we were talking someone came in and said, gee, your name and your testimony from yesterday—they are really asking Jeff a lot of questions about it and it is really—you know, he is being very seriously questioned about it. And I said, well, I knew that and I feel bad about it.

I was sitting in my office, and my office is located about 2½ blocks from here, and I said before any vote is taken by the committee, I want Jeff to know that no matter how it all turns out, whether he wins or whether he is not approved by the committee or the Senate—I want him to know that I simply did not really intend for all this to get to the point where we are today, but things developed and I had a duty to do what I did, and that when it is all said and done, we can walk away from it and hopefully be somewhat like we were before.

So nobody, you know, called me and said, Hebert, you better come up here right away because you have got to straighten this out. I came up on my own, really, just to pull Jeff aside and to say, you know, you and I go back a long way and we have had a lot of conversations over the years, and I just want you to know that I did yesterday—I answered the questions that they asked me.

I thought I gave a fairly balanced view of it yesterday, but I do not know if that was really coming out today.

Senator HEFLIN. Let me ask you this: Have you been dealing in the southern district of Alabama with U.S. attorneys before Mr. Sessions was the attorney?

Mr. HEBERT. I know I had some dealings with a Mr. Kimbrough, who I believe preceded him in that district. And if I am not mistaken, I may have had some dealings with Mr. Whitespunner, who preceded Mr. Kimbrough, and then there was someone who served as an acting U.S. attorney, Mr. Farve, I believe, who is now deceased, and I had some dealings with him as well.

Senator HEFLIN. Well, in dealing with Mr. Kimbrough, who was U.S. attorney—were your dealings with him—was he always cooperative?

Mr. HEBERT. No; he was not always cooperative; neither was Mr. Whitespunner. I had very little dealing with both of those gentlemen, I might add, but to the extent that we in the Civil Rights Division—and at that time, I was not in the Voting Section; I was in the Education Section handling school desegregation cases.

I did not have that many Alabama school desegregation cases. I spent most of my time in Georgia and Mississippi. But we had some encounters with both Mr. Kimbrough and Mr. Whitespunner, and they oftentimes were not very helpful and cooperative.

Senator **HEFLIN**. Were there remarks made by either predecessors of Mr. Sessions in office that would lead you to believe that they might have racial prejudices?

Mr. **HEBERT**. I really did not have very many conversations with them that would leave me in a position to answer that, Senator. I really know Mr. Sessions far better and have had far more opportunity to observe him than I did either of those two gentlemen.

Senator **HEFLIN**. Who was the judge that—well, it is a hearsay situation.

Senator **DENTON**. Excuse me, Senator Heflin. You can have your time, but we do have five bells. If you wish to——

Senator **HEFLIN**. Have we got a vote on?

Senator **DENTON**. Yes, sir.

Senator **HEFLIN**. Well, that is all right. Since it is hearsay, I will not pursue it.

Senator **DENTON**. Well, you can continue your questioning.

Senator **HEFLIN**. No; I will go vote.

Senator **DENTON**. All right. I will have to go vote. We will stand in recess for 7 minutes.

[A brief recess was taken.]

Senator **DENTON**. I should announce that the ranking minority member has suggested, and we agreed, that today we will finish, or do all we can to finish, with Mr. Sessions, and then, on Senator Biden's suggestion, reconvene on Wednesday, the 19th, at 10 a.m.

That leaves many witnesses here without having had the opportunity to testify yet. We have witnesses in airplanes on the way up because we did not know that there were going to be so many witnesses here, so there are many inconvenienced.

But there are Senators who have to be other places and there is no other way to do it because there are many who wish to question Mr. Sessions further on the minority side, and that is the way we will do it

So the witnesses are free to remain, if they wish to, but they will not be testifying today. Wednesday, the 19th, at 10 a.m., is when we are going to reconvene the hearing.

Mr. Hebert, I just have a couple of quick questions for you. You did answer Senator Heflin by stating that you did find Mr. Kimbrough less cooperative, and you have indicated that you are racially sensitive. And you indicated that you thought that you, as an attorney, would use the statements that you have heard from Mr. Sessions as a reason to ask for recusal.

Mr. **HEBERT**. Excuse me, Senator.

Senator **DENTON**. Consider asking for a recusal.

Mr. **HEBERT**. Yes.

Senator **DENTON**. That is right; I am glad you corrected me on that.

Do you consider that by virtue of your background in the trenches of civil rights that your threshold is lower in a recusal situation? In other words, do you consider your sensitivity to be much greater on civil rights issues than most of the Federal judges now seated in the South?

Mr. **HEBERT**. Well, we have a lot of fine judges in the South now, and many of them are very sensitive. And I do not really know how that works out relative to my own. I will tell you, though, that the attorneys in the Civil Rights Division are trained to be sensitive and to have a high threshold for racial sensitivity, and I consider myself to have a high threshold.

Senator **Denton**. I am certainly aware of that.

Do you think Mr. Sessions is a racist?

Mr. **Hebert**. No; I do not.

Senator **Denton**. Do you think Mr. Sessions will judge cases fairly?

Mr. **Hebert**. Senator, I have wrestled with that question more over the last 24 hours perhaps than you have, with all due respect, and I can honestly say that I think you very much on this committee sit as judges, weighing the evidence and trying to decide whether a preponderance of it points in one direction or the other.

I have done that in my own mind, but I have a very limited amount of information to deal with and you have a wider variety than I do. I do not know whether he would be prejudiced when he was on the bench or whether he would be impartial.

I might add that that is total speculation on my part and I cannot say whether I would know that about any nominee unless I had the opportunity to sit and listen to each and every word spoken. I would not base my decision or my vote on one person's testimony, as I would in a case, either.

Senator **Denton**. All right. Are you aware that I sent five names—this is public information, but it should be repeated here—forward to the Justice Department besides Mr. Sessions, including J. Michael Druhan, Jr., who later withdrew; Gordon B. Kahn, a U.S. bankruptcy judge with primarily Democratic connections, and his name is K-a-h-n; Mr. Patrick Sims, primarily Democratic connections, and he was a U.S. magistrate for the southern district of Alabama; along with Jeff Sessions' name to the Justice Department?

He was selected by the Justice Department, and I just wanted to make that clear at this hearing.

If Mr. Sessions says he will be fair as a judge, would you believe him?

Mr. **Hebert**. I guess in the courtroom we would say this question has been asked and answered. He is a man of his word and when he says something, I believe him. And if he says that—and I think I said in response to you, Senator Denton, that if he says he is going to enforce the law, and that he may disagree with the law but he is going to enforce it, I would believe him.

Senator **Denton**. Thank you very much, sir. You are dismissed.

Senator **Biden**. Well——

Senator **Denton**. Go ahead, Senator Biden.

Senator **Biden**. I do not have any further questions except to say that I am impressed. We have a lot of witnesses that come before this committee. I have been here going on 14 years.

I was not being solicitous when I said earlier that I appreciate the difficulty of your situation. Quite frankly, it is a little like if one of my colleagues for whom I have great affection were appointed to the bench and I had to vote.

There are men who I believe are decent and honest and men of their word, but I believe their views and their prejudices run so deep, there are some cases I just would not want them being any part of.

That prejudice could be on whether they could fairly handle a rape case, fairly handle a civil rights case. And I suspect before my tenure in the Senate is up, which is in 1990, I am probably going to have to make those judgments on colleagues of mine and I do not look forward to it. I hope I do it with the degree of honesty and grace that you have done it.

Thank you for testifying.

Mr. **HEBERT**. Thank you, Senator Biden, and your comments indicate that you heard what I said.

Senator **DENTON**. Thank you, Mr. Hebert.

You are excused.

Senator **BIDEN**. Mr. Chairman, I would like to ask unanimous consent that the transcript that we have been referring to so much all afternoon be inserted in the record at the appropriate point in its entirety.

Senator **DENTON**. Without objection, it is so ordered.

[Document follows:]

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

- - -

IN RE: NOMINATION OF)
JEFFERSON SESSIONS, TO BE)
UNITED STATES DISTRICT JUDGE)
FOR THE SOUTHERN DISTRICT OF)
ALABAMA)
)

Sworn Testimony of: PAUL F. HANCOCK
J. GERALD HEBERT
ALBERT S. GLENN
DANIEL L. BELL

Washington, D.C.
March 12, 1986

Pages 1 thru 73

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UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

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IN RE: NOMINATION OF :
JEFFERSON SESSIONS, TO BE
UNITED STATES DISTRICT JUDGE :
FOR THE SOUTHERN DISTRICT OF
ALABAMA :

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Wednesday, March 12, 1986

Room SD-246
Dirksen Senate Office Building
Washington, D. C.

The sworn testimony of Paul F. Hancock, J. Gerald Hebert, Albert S. Glenn, and Daniel L. Bell, was taken commencing at 2:47 p.m.

Present:

REGINALD C. GOVAN
Minority Counsel/Investigator
Committee on the Judiciary
United States Senate

FRANK KLONOSKI
Investigator
Committee on the Judiciary
United States Senate

KENNETH P. BERGQUIST
Deputy Assistant Attorney General
Office of Legislative and Intergovernmental Affairs
United States Department of Justice

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PROCEEDINGS

(2:47 p.m.)

Mr. Govan. My name is Reginald Govan and I'm Minority investigator for the Judiciary Committee.

Mr. Klonoski. If I can butt in, why don't we establish that we're holding this meeting on request of Senator Biden, who had requested two attorneys from the Department of Justice? Mr. Govan had some questions and that's why we're here.

Mr. Govan. My understanding of the groundrules for our session today is, first, as Frank stated, Senator Biden requested the presence of two Justice Department attorneys, Mr. Paul Hancock and Mr. Jerry Hebert, at the confirmation hearings scheduled for tomorrow, Thursday, at 2:00 p.m., on the nomination of Jefferson Sessions to the United States District Court.

It is my understanding that this session is designed to, to some extent, answer our need for information. At the same time, we are not giving up any rights to request the presence of the attorneys at the hearing under whatever procedures, if it should be necessary, would be worked out.

Mr. Bergquist. Let me at this point make a remark that if you do want these attorneys present at the hearing tommorrow, then I would suggest that you for a subpoena because it is not our policy to provide line attorneys in the hearing process unless there is some extraordinary reason.

Mr. Govan. Mr. Hancock, you were --

Mr. Bergquist. Before you start, let me make one other point for the record. Since you're obviously going to be questioning two of these witnesses in regard to their comments they made to an ABA investigator as a part of the ABA investigation of Mr. Jeff Sessions, I think it's appropriate to note that these remarks that were given to the investigator were given in confidence; that by bringing them into an open hearing and have them testify on the remarks that they made to an ABA investigator would have, in the words of Senator Biden, a chilling effect on other individuals who may be called upon by the ABA to give confidential statements.

So for the record, I just want that warning to be noted.

Whereupon,

PAUL F. HANCOCK

was called as a witness and, having previously been duly sworn, testified as follows:

Mr. Govan. Mr. Hancock, how long have you been employed by the Civil Rights Division of the Justice Department?

Mr. Hancock. Since September of 1970.

Mr. Govan. And did you go to that job out of law school?

Mr. Hancock. Yes.

Mr. Govan. What are presently your responsibilities in the Justice Department?

Mr. Hancock. I'm assigned to the Voting Section of the Civil Rights Division. My position is assistant for litigation in the Voting Section. I have initial supervisory responsibility over the attorneys in the Voting Section that perform litigation work.

Mr. Govan. In the course of your responsibilities with the Justice Department, have you had an opportunity to work with Mr. Jefferson Sessions, who is presently United States Attorney for the Southern District of Alabama?

Mr. Hancock. Yes.

Mr. Govan. In what capacity did you work with him?

Mr. Hancock. We prosecuted a number of civil rights lawsuits in the Southern District of Alabama and Mr. Sessions is United States Attorney, and we always deal through the

United States Attorney and the United States Attorney is, to some extent, involved in all litigation in his or her district.

Mr. Govan. Have you worked with other United States Attorneys across this country?

Mr. Hancock. I've worked with other United States Attorneys in different parts of the country. I obviously haven't worked with all of them, but --

Mr. Govan. Approximately how many U.S. Attorneys have you worked with, a rough estimate?

Mr. Hancock. I've worked with the United States Attorneys in every district where the United States has had a voting rights lawsuits. Our lawsuits are, to a large extent, in the States that are covered by the Voting Rights Act, which are the States that comprise the old Confederacy.

But we're not limited to that region. We've been involved in litigation in New York, Hawaii, Alaska, Chicago, California, Montana, Idaho, and different States outside of the old South.

Mr. Govan. You and I had a conversation last week about your having talked with the representative of the American Bar Association who was investigating Mr. Sessions' nomination, is that correct?

Mr. Hancock. That's right.

Mr. Govan. And during that conversation, I told you that

I was calling on behalf of Senator Biden, isn't that right?

Mr. Hancock. That's correct.

Mr. Govan. And I asked you, had you, in fact, talked with a representative of the ABA, is that right?

Mr. Hancock. You did.

Mr. Govan. And what was your response to that question?

Mr. Hancock. I told you that I had talked to a representative of the ABA; that I was asked questions about Mr. Sessions and his nomination and was told that the answers would be kept in confidence and that this was part of the normal routine of investigating people who had been nominated for the federal judiciary to call people who may have information about them.

Mr. Govan. And I asked you were your conversations with the ABA concerning professional experiences that you had with Mr. Sessions, isn't that right?

Mr. Hancock. I don't recall one way or the other whether you asked me that. You did ask me about whether I talked to the ABA about Mr. Sessions' qualifications to be a federal judge. I don't recall much else about it.

Mr. Govan. Do you recall having told me that the information that you had was a result of litigation that you had been involved in on behalf of the Department of Justice, and therefore you were not willing to discuss with me those matters that you discussed with the American Bar Association?

Mr. Hancock. I told you that what I had said to the ABA, I said because I felt as a lawyer and a member of the ABA that I had a responsibility to answer their questions; that I was answering them in confidence and that I thought it was entering another realm by telling you what I had told the ABA.

And I think that the circumstances were different, so I didn't tell you what I had told the ABA.

Mr. Bergquist. Let me at this point interject. His actions were entirely proper. It is departmental policy that any contact made with a line attorney in the Department of Justice must be made through my office, and he did an entirely proper thing by refusing to reveal any information.

So nothing in the record should reflect that he acted improperly or refused to answer your questions.

Mr. Govan. I certainly agree with that. I just wanted to establish for the record that Mr. Hancock and I did talk last week and what the substance of that conversation was.

Mr. Bergquist. Yes. Now, in regards to future questions that you have here, he may discuss cases that are past litigation. He may not discuss current litigation.

Mr. Govan. Well, we'll cross that bridge as we get to it, if it's necessary.

Mr. Bergquist. Do not talk about current litigation, matters that are under present litigation, but you may discuss any cases that have already gone through the litigation process.

Mr. Govan. Mr. Hancock, would you list for us the cases in which you worked with Mr. Sessions and what interaction you had with him in each of those cases, to the best of your recollection?

Mr. Hancock. Okay. I don't know that I can list all the cases. I don't recall the date when Jeff first became U.S. Attorney. We've had a number of voting rights lawsuits in the Southern District of Alabama; those cases are a matter of public record.

I've worked -- I've had some contact with Mr. Sessions, I would assume, in each one of those cases. To name a few of them -- I don't know that it's a complete list, but we tried cases involving -- we were a party to Bolden versus the City of Mobile.

We have litigated cases styled United States versus Dallas County, Alabama; United States versus Maringo County, Alabama; United States versus Conecuh County, Alabama -- C-o-n-e-c-u-h; United States versus Hale County, Alabama.

I can't recall others at the moment, but I know that is not a complete list.

The rest of your question of what contact I had with Mr. Sessions --

Mr. Govan. Yes, right.

Mr. Hancock. I'm not able to tell you every time I talked to Mr. Sessions about each one of those cases. The normal procedure within the Department is that as we recommend litigation in a U.S. Attorney's district, that person is afforded an opportunity to provide input into the recommendation process.

I generally talk to a United States Attorney at the time we are recommending filing of a lawsuit either before the Assistant Attorney General gives his concurrence or upon concurrence of the Assistant Attorney General to determine whether the United States Attorney has anything that he or she wants to consider in deciding whether to file the litigation, any objection to the lawsuit, or any concurrence to the lawsuit.

That would have been, in this situation, the primary conversation that I would have had with Jeff Sessions, would have been the time that we were considering litigation. The decision whether to initiate a lawsuit under the Voting Rights Act in my field is made by the Assistant Attorney for the Civil Rights Division.

It's not made by the United States Attorney, although, as I say, the United States Attorney provides input into the process. The litigation, once initiated, is handled by us and our lawyers out of Washington, not by the United States Attorneys' offices.

To a significant extent, the United States Attorney is not involved in the litigation once the lawsuit is filed. In some instances, depending on the district and whether the United States Attorney wants involvement, it varies, but our lawyers handle the litigation under the Voting Rights Act.

So if I'm answering your question fully, once the lawsuits are filed, I don't have very much contact with the United States Attorney, particularly in this situation. Our litigation is done without much participation by the United States Attorney in the Southern District of Alabama.

Mr. Govan. I take it, then, that the American Bar Association represenative questioned you about one of these five cases?

Mr. Hancock. Yes. As I recall -- and, again, at the time I talked to the representative of the ABA, I didn't consider it to be a very significant conversation and my recollection is not -- I don't remember everything that I told the man, but I do recall being asked some -- he apparently had had some information about one of the lawsuits and he asked me about one of the lawsuits.

Mr. Govan. Which lawsuit?

Mr. Hancock. The Conecuh County lawsuit.

Mr. Govan. And what information do you have on Conecuh County concerning Mr. Sessions?

Mr. Hancock. The issue that seems to be on the floor was when we had requested an investigation in Conecuh County and had requested the FBI to do an investigation for us in Conecuh County, we had -- the form of requesting those investigations is a memorandum from the Civil Rights Division to the Director of the FBI requesting the investigation.

The issue involved was that the -- we later found out that the requested investigation had not been conducted, and when we inquired why we learned that the United States Attorney had told the Bureau not to conduct the investigation.

Mr. Govan. If you recall, at what stage was the investigation when the request went to the FBI for investigation?

Mr. Hancock. I'm not sure what you mean by "request." The investigation was just beginning because we were requesting the FBI to do a particular investigation.

Mr. Govan. Had a lawsuit actually been filed against Conecuh County?

Mr. Hancock. I believe at that time -- I'm not sure whether -- we've had -- I have been unable to piece all of this back together, and I've checked my records and I don't have any records on it.

It could have been -- we had a lawsuit -- I'm trying to think whether we had two lawsuits -- we did have two lawsuits against Conecuh County, as I recall now. One involves a matter under Section 5 of the Voting Rights Act, which requires pre-clearance of voting changes, and the other matter involved a lawsuit that we filed concerning discriminatory treatment that black voters receive when they come to the polls to vote in Conecuh County.

I've had some difficulty resurrecting whether the investigation at issue was in the one lawsuit or the other. At times I thought it was one and the other times I thought it was the other.

Mr. Govan. Do you recall the purpose of the investigation?

Mr. Hancock. No. Because I'm not able to piece it back together, I can't. It was one of two purposes, to the best that I can recall. On the one hand, it may have been gathering information about the treatment that black voters receive when they come to vote in Conecuh County.

The other issue that it may have concerned was at one point in the Section 5 lawsuit, the county presented in court a letter that purported to grant Section 5 pre-clearance to voting changes, and the letter was an obvious forgery signed by someone on Department stationery.

It was signed with the name of someone who was listed as Assistant Attorney General for Civil Rights, and the person had never been Assistant Attorney General. It was a name we never heard of; it was a William Daley or something like that, or some Daley.

But we knew -- we're crack investigators -- that it wasn't a true letter and we asked the FBI to try and determine who may have prepared the letter. So what I'm saying -- it was one of those two matters, but I just don't know which one.

Mr. Govan. Did you discuss this matter with Mr. Sessions?

Mr. Hancock. I may have. I don't recall whether I discussed it with Mr. Sessions or not; I may have. In fact, I probably did. I know for a fact that I discussed it with my supervisors in the Department of Justice and that someone later discussed it with Mr. Sessions.

Mr. Bergquist. I think it's appropriate to note at this point that Mr. Sessions did not have the authority to tell the FBI not to complete an investigation that's ordered by the Department of Justice.

Mr. Govan. Pardon?

Mr. Bergquist. Mr. Sessions does not have the authority to tell the FBI not to proceed with an investigation that is ordered by the Department of Justice.

Mr. Govan. Mr. Hancock, when did you first learn that Mr. Sessions had attempted to intervene in your request for an FBI investigation?

Mr. Hancock. My recollection, which is, again, foggy, is that I became concerned that I didn't have the results of the investigation and I checked to see how the Bureau was proceeding with the investigation, and it was at that time that I learned that the investigation was not being conducted.

Mr. Govan. Who told you that?

Mr. Hancock. I believe it was the FBI told me that, but I'm not positive of that.

Mr. Govan. Headquarters or a field office?

Mr. Hancock. It would have been the headquarters office here in Washington.

Mr. Govan. And what exactly did they tell you?

Mr. Hancock. That the investigation was not being conducted; that the U.S. Attorney had, I believe, instructed the local office not to conduct the investigation.

Mr. Govan. Do you know what reasons were offered?

Mr. Hancock. No, I don't.

Mr. Govan. What was your response to that?

Mr. Hancock. I contacted my superiors to tell them that I thought that it was an investigation that we needed to conduct and that I didn't think it was proper for the United States Attorney to stop it.

Mr. Govan. Who did you contact?

Mr. Hancock. I believe it was Mr. James Turner, who was -- again, I can't piece the time schedule together on this, but I most likely talked to Mr. Turner about it. It may have been during the time before William Bradford Reynolds was confirmed as Assistant Attorney General for Civil Rights.

And during that time period, Jim Turner was Acting Assistant Attorney General.

Mr. Govan. Notwithstanding Mr. Bergquist's representation which I take to be true that Mr. Sessions did not have authority to intervene or attempt to intervene in the FBI investigation requested by the Civil Rights Division in Washington, you are certain that you were told by the FBI that the reason they did not conduct the investigation was because of Mr. Sessions' intervention?

Mr. Hancock. I didn't say it was by the FBI there. I think I said by the field office -- by the person in charge of these investigations in Washington. That's the best of my recollection, yes.

I mean, I'm fairly confident that the investigation was not conducted at Mr. Sessions' request. I can't say with as much confidence that the FBI told me that or maybe Jeff Sessions told me that. I don't know. I don't think that's a matter in dispute, as far as I know.

Mr. Govan. I hate to be repetitious, but did I ask you did you speak about this problem?

Mr. Hancock. Yes, and I think I said that I may have spoken to Mr. Sessions about it at some point in the process. In fact, I recall that I spoke to Mr. Sessions about it and he confirmed that he thought it was an investigation we should not conduct and told the Bureau not to conduct it.

Mr. Govan. Did he offer any reasons in support of his opinion that the investigation should not have been conducted?

Mr. Hancock. He didn't agree with, and I don't know that I can give any more details than that. I don't recall precisely what he told me. He didn't think it was an investigation we could conduct.

He may have thought that we were -- I don't know what he thought. He may have told me that we were just barking up the wrong tree. Those weren't his words, but I don't know if he had knowledge of the local situation involved.

It's very difficult for me because I'm not even sure which investigation it was. This matter was resolved very quickly and it didn't linger. It was a misunderstanding when it arose and it's not unusual to have these kind of misunderstandings, and we resolved it.

Mr. Govan. Prior to being told by the FBI that they had not conducted the investigation because of Mr. Sessions' intervention, had you ever heard from Mr. Sessions or anyone in his office, any of his assistant U.S. attorneys, with respect to this investigation?

Mr. Hancock. No.

Mr. Govan. Would you have expected to have heard from them?

Mr. Hancock. I would have no reason to hear from the assistant United States attorney about an investigation that we request, no.

Mr. Govan. Would you expect to have heard from the United States Attorney?

Mr. Hancock. I don't -- the United States Attorney is provided a copy of every investigation that we request. The relationship with the United States Attorneys varies greatly from district to district, and in some instances it's normal that I talk to U.S. Attorneys about every step we take in their district.

In other instances, we have no contact with United States Attorneys. I can't give you any rules of what would be expected.

Mr. Govan. Other than Mr. James Turner, your superior, did you discuss the situation with any other colleagues in the Division?

Mr. Hancock. Oh, I'm sure I did. I'm sure I talked about it within my office. My immediate supervisor is Gerald Jones, who's the Chief of the Voting Section, and I'm sure I discussed it with Mr. Jones before I discussed it with Mr. Turner.

I do have more recollection of discussing it with Mr. Turner. I'm not sure why that is, but I'm sure I talked with Mr. Jones about it, also.

Mr. Govan. Based upon your experience in the Division handling voting rights cases, was Mr. Sessions' intervention unusual?

Mr. Hancock. It's unusual for a U.S. Attorney to tell the Bureau not to do an investigation that we requested, yes. It's not unusual to have disagreements with United States Attorneys over how to proceed in civil rights cases.

Mr. Govan. To the best of your recollection, this investigation would have been conducted prior to the initiation of either of the two lawsuits?

Mr. Hancock. No, no; not necessarily, no. If it was involving the letter that I mentioned to you -- the letter arose during the trial of the lawsuit, so that would have been requested while the litigation was pending.

If it was about our lawsuit that we filed concerning treatment of voters at the polls, it would have been done before the lawsuit was filed.

Mr. Govan. You stated that you've attempted to reconstruct the paper record of these events. In that attempt, wouldn't you have been able to locate the written request to the FBI for an investigation, and thereby determine which of the two lawsuits this occurred in?

Mr. Hancock. We should be able to. I have had members of my staff check the records in Conecuh County and --

Mr. Bergquist. Well, I'm sure both were done; both requests were initiated. But you wouldn't know which one wasn't done.

Mr. Hancock. My lingering reservation about this is that I haven't been able to locate an FBI request concerning the treatment at the polls lawsuit. I know that we had the Bureau -- I confirmed that we had the Bureau investigate the letter issue.

But, again, I'm not trying to be evasive with you, but my recollection is really not clear. When I started trying to put this back together, I remember the issue, of course, because it was a disagreement that was not pleasant, even though it was resolved quickly.

But I thought -- when I first tried to reconstruct it, I thought it was about our suit involving treatment of voters at the polls, but I'm told we never had the Bureau do an investigation about that.

So if my staff is right that we never did, then my recollection is wrong.

Mr. Govan. You characterized the experience as unpleasant. Why?

Mr. Hancock. Well, any disagreement with a United States Attorney is unpleasant. Again, though, I'm not suggesting that this is anything outside my normal duties. I deal with United States Attorneys and work with United States Attorneys on all our lawsuits.

By the very nature of our lawsuits, they are the kind that raise differing opinions, particularly among local United

States Attorneys, and that is one of the reasons that civil rights cases historically have been handled out of Washington rather than in the local United States Attorneys offices.

Mr. Govan. The investigation that would have been requested would have been either a fraudulent letter, purportedly coming from the Chief of the Civil Rights Division of Justice or discriminatory treatment of black voters.

What was the discriminatory treatment being alleged?

Mr. Hancock. We eventually filed a lawsuit against Conecuh County alleging that black voters were subject to discriminatory treatment when they came to vote. Examples were that racially derogatory terms were used by poll officials to the black voters; that older black voters were made to stand in line for long periods of time to vote, whereas older white voters were offered chairs. The lines were long.

Those are the kind of treatment -- we also challenged in the same lawsuit discrimination in selecting persons to be poll workers. We were alleging that they discriminated against black persons who desired to work at the polls, and the two were tied together.

Mr. Bergquist. What was the resolution of the suit?

Mr. Hancock. The suit was settled by a consent decree.

Mr. Govan. Did you have any particular response when you found out that the investigation had not occurred because of discussion with Sessions, decided to stop it on its own and then said, we stopped it because we talked with Mr. Sessions.

The FBI should also know that Mr. Sessions doesn't have the authority to stop investigations requested by the Department of Justice. So that's something we can nail down very quickly.

Mr. Govan. If I could just follow up on Mr. Bergquist's comment, it's my understanding, Mr. Hancock, that you did speak to Mr. Sessions and that Mr. Sessions noted -- during that conversation, he noted his disagreement with the investigation and didn't feel it was a good idea, and this conversation took place after you had learned from the FBI that the investigation had not been done.

Mr. Hancock. Yes.

Mr. Govan. Have you had any other interactions with Mr. Sessions?

Mr. Hancock. Oh, sure, yes. I've dealt with him on all the lawsuits that we've brought in the Southern District of Alabama.

Mr. Govan. Have you ever had an experience with Mr. Sessions on those lawsuits similar to this experience?

Mr. Hancock. No, no. Mr. Sessions has been very cooperative and has not interfered with our litigation activity. In the Southern District of Alabama, we've probably brought -- I don't know of any judicial district in the country where we've brought more cases.

Mr. Bergquist. Would you characterize it more than just not interfered? Has he been cooperative?

Mr. Hancock. Yes, and we often had to ask assistance from his office to get pleadings filed at the last minute.

Mr. Bergquist. Has he been cooperative in all ventures?

Mr. Hancock. Yes, yes. He has made the staff and himself available to sign pleadings when needed. If we have to get something filed or if we have anything that needs to be done, he has regularly been a very good help to us in getting things done.

Mr. Bergquist. So you see no resistance on his part to civil rights litigants, in general?

Mr. Govan. Ken, I'm going to object to that question, in all candor. I mean, you're really here to observe

Mr. Bergquist. No. I'm here to protect the interests of the Department.

Mr. Govan. I understand, but Mr. Sessions can be asked that question, and it seems to me --

Mr. Bergquist. No, he can't be asked that question. He can be asked that question.

Mr. Govan. I think, in all seriousness, I'm going to object. You have a much more limited role.

Mr. Bergquist. Well, I won't ask that question, then.

Mr. Klonoski. We can ask him at the hearing.

Mr. Sessions' intervention with the FBI?

Mr. Hancock. I'm not sure what you're getting at. My response was to note my disagreement with what he had done to my superiors, and we resolved it.

Mr. Bergquist. How was it resolved?

Mr. Hancock. The investigation went ahead. We talked to Mr. Sessions. I talked to Mr. Sessions and others may have talked to him. I don't recall whether Mr. Turner talked to him or someone from the Attorney General's office talked to him; I don't know.

But it was agreed that it was our call and that the investigation would go forward.

Mr. Govan. Were you angry?

Mr. Hancock. I was angry when I learned that the investigation had been stopped, yes. I was pleased when we resolved it quickly.

Mr. Govan. Frank, do you have any questions?

Mr. Klonoski. The only thing I wanted to ask was was Mr. Sessions aware that he could or could not stop an investigation?

Mr. Hancock. I don't know.

Mr. Klonoski. That's all I have.

Mr. Bergquist. Now, again, we have not established whether Mr. Sessions did or did not stop it. That's what the FBI told him. Now, we don't know whether the FBI, in

Mr. Bergquist. No. I mean, ask him. How is Mr. Sessions going to be able to characterize it from someone else? The question was whether he seemed cooperative.

Mr. Govan. And he answered the question. He said, yes, he's very cooperative. He signs pleadings, he makes sure that filings are done on time, and he has regularly offered assistance to the Civil Rights Division. The question was answered.

Mr. Bergquist. Okay, I'll settle for that.

Mr. Govan. I would think so.

Have you ever heard Mr. Sessions make remarks that you would consider to be racially insensitive?

Mr. Hancock. No, I have not.

Mr. Govan. Have you ever heard others speak of Mr. Sessions having made such remarks?

Mr. Hancock. Well, I have heard third and fourth-hand that remarks have been made, but it's hearsay upon hearsay upon hearsay, and I don't have any knowledge of my own. I have had, actually, limited dealings with Jeff Sessions. I have talked to him about lawsuits, and that's all.

I haven't talked to him about anything where I would form any opinions of my own about his personal feelings, if that's what you're getting at.

Mr. Govan. I have nothing else.

Mr. Bergquist. Paul, thanks very much.

Mr. Hancock. Thank you all.

Mr. Govan. Thanks.

(Whereupon, the above-entitled testimony was concluded.)

Whereupon,

J. GERALD HEBERT

was called as a witness and, having previously been duly sworn, testified as follows:

Mr. Govan. Good afternoon. My name is Reggie Govan and I work for Senator Biden and the Judiciary Committee. Let me first start off by explaining that Frank and I work for the Committee and we are involved in preparing for the confirmation hearing of Jefferson Sessions to the United District Court in Alabama. That hearing is scheduled for tomorrow.

Let me first establish that you and I did have a telephone conversation some time last week, is that correct?

Mr. Hebert. Yes.

Mr. Govan. And during that conversation, you confirmed that you had spoken with a Mr. Fisk, who you identified as the U.S. Attorney for the Southern District of New York -- or former U.S. Attorney for the Southern District of New York?

Mr. Hebert. I think that's the name, yes. That's what I remember, Robert Fisk.

Mr. Govan. And you also stated that Mr. Fisk asked you several questions concerning your view of Mr. Sessions' fitness to be a judge, issues related largely to temperament as opposed to your professional experience, is that correct?

Mr. Hebert. Most of the conversation that I had with

Mr. Fisk dealt with judicial temperament and attitudes about race. We started out, as I recall, the conversation with him asking me about cases that we had worked on together.

Mr. Govan. And during that conversation, you were unwilling, were you not, to share with me the substance of your experience with Mr. Sessions?

Mr. Bergquist. Let me again break in to say that by doing so, he was following departmental policy that any time you are contacted by someone from the Hill, all such contact must be cleared through my office before you are allowed to answer any questions.

Mr. Govan. Fair enough.

Mr. Hebert. I did indicate that I would think it would be inappropriate for me to reveal the substance of my conversation with the ABA representative that had contacted me.

Mr. Govan. And I told you I respected that conclusion, is that correct?

Mr. Hebert. You did, right.

Mr. Govan. How long have you been associated or employed by the Department of Justice?

Mr. Hebert. Since August of 1973.

Mr. Govan. Did you come to the Department right when you graduated law school?

Mr. Hebert. Yes.

Mr. Govan. What are your responsibilities?

Mr. Hebert. I'm senior trial attorney in the Civil Rights Division, working within the Voting Section, although I haven't spent my 13 years all in the Voting Section. But I have spent all of my time within the Civil Rights Division.

Mr. Govan. Has your interaction with Mr. Sessions occurred since you've been assigned to the Voting Rights Section?

Mr. Hebert. Yes.

Mr. Govan. And what has been your interaction with Mr. Sessions?

Mr. Hebert. I have been the lead trial attorney for the Justice Department in approximately five or six cases in the Southern District of Alabama, cases all of which have arisen under the Voting Rights Act where the United States has been the plaintiff.

All of my contact with Jeff Sessions has been in connection with my handling of those cases. I've spent a considerable amount of time in Mobile in 1981, for example. I haven't examined my travel records, but I think they would show I spent the greater part of two months in Mobile trying two cases in the U.S. District Court there.

Mr. Govan. How would you characterize your interaction with Mr. Sessions, you know, through the years in which you've been doing cases in the Southern District?

Mr. Hebert. Well, when he first took over the U.S. Attorney's office, it was a little different, I guess, than it is now. We, right now, have what I consider to be a pretty good working relationship, and in terms of our personalities, I think we get along fairly well.

We have different views on a lot of things, but we're able to put those aside when it comes to doing departmental business. When we started out back in 1981, I remember there being some countering from Jeff, a little opposition to what the Division wanted to do, and having a number of conversations with him in his office in Mobile about his essential unwillingness to go forward with some things -- or reluctance more than unwillingness, I guess.

Mr. Govan. How did that reluctance to go along with Department initiatives manifest itself?

Mr. Hebert. Well, mostly, it was where we were getting ready to -- as I recall, the case I have in mind was in the Mobile cases, we had intervened in the Mobile voting rights cases.

There were two of them, one in the fall of 1980 and the other in the spring of 1981, both of which went to trial in the spring of 1981. And I think Jeff made it pretty clear that he didn't really think that these cases had much merit.

But he said he recognized that there were cases the Department had decided as a policy matter it was going to get involved in and that there wasn't very much he could do about it.

Mr. Govan. What, to the best of your recollection, did Mr. Sessions say?

Mr. Hebert. I don't know if I can recall, you know, what was said. I just remember the gist of what he said was that he didn't think these cases had merit. When I say "these cases," I'm referring to cases brought challenging the at-large election systems, which is what the two cases involved.

You may recall -- I just remembered -- you may recall that around that time period -- if you looked into the cases at all, you'll remember that there was a big flare-up between Senator Denton, who criticized the Justice Department's filing of an amended complaint in the Mobile case because it contained the term "white supremacy," and we were asked to delete that reference in the complaint by Senator Denton, who made, as I understand it, a request to Attorney General Smith.

And I think it was in connection with my discussion with Jeff on that that we started talking about the merits of the cases.

Mr. Govan. Do you recall Mr. Sessions expressing -- making any expression with respect to the dispute raised by Senator Denton about the term "white supremacy" being contained in a Justice Department pleading?

Mr. Hebert. I remember we had a conversation about that. I really don't remember what he said, though, but I remember we talked about it. I had spoken with Jeff during 1981 on a lot of occasions, and I have since, so it's hard for me to really remember what he said about it.

I do remember that I had a conversation with him, though, about Senator Denton's insistence that we change the complaint. In fact, the complaint was changed. I don't even know if Jeff got involved in it at all, but a new complaint was filed deleting references to white supremacy and we went forward with the case and we won it.

Mr. Govan. I'm aware that you won the case. Do you recall him expressing any views or opinion about the use of the term "white supremacy" in the brief?

Mr. Hebert. No, I don't.

Mr. Govan. Have you ever heard Mr. Sessions express any opinion with respect to white supremacy as a concept?

Mr. Hebert. No, no. We've talked a lot about blacks and whites and what position they ought to occupy, but never -- he's never said anything about white supremacy.

Mr. Govan. Let's take a break.

(Pause.)

Mr. Govan. How would you characterize your discussions with Mr. Sessions concerning the positions blacks and whites ought to occupy?

Mr. Hebert. We had a number of conversations about voting cases and civil rights cases, and Jeff is a very amiable individual. He's friendly, and he has always been friendly to me, despite the fact that we haven't seen eye to eye on some things.

But that has never stopped him from inviting me into his office and talking very frankly about what his opinions were. And we talked about voting cases and civil rights cases generally, busing cases, and the role of public interest groups and, you know, how far you really should go in civil rights cases.

And I think he has expressed his opinion to me numerous times about that. He has a tendency to pop off, I guess would be the best way to put it, sometimes about his opinions. He's an opinionated individual.

I have to also put it in the context of the fact that he and I get along pretty well.

Mr. Govan. Okay.

Mr. Hebert. It's not like he's an antagonist.

Mr. Govan. Has Mr. Sessions expressed an opinion to you about busing cases?

Mr. Hebert. Yes.

Mr. Govan. What is his opinion?

Mr. Hebert. He things busing cases have gone too far. He told me he thought that we are really making a mistake driving white people out of public education.

Mr. Govan. Has he expressed an opinion to you about voting rights cases?

Mr. Hebert. Yes, I would say we've talked about voting cases in particular. We've said about how -- I remember having a conversation with him; I'm trying to think if it was -- not Voting Rights Act cases, I wouldn't say, actually, now that I think about it.

We were talking about voter fraud cases, not about, you know, Voting Rights Act, but the type of cases I traditionally handle. I don't get involved in voter fraud very much.

Mr. Govan. What did Mr. Sessions say to you with respect to voter fraud cases?

Mr. Hebert. He thought that the time had come when we needed to make sure that if anybody violated the law that we were going to prosecute them whether they were black or white. It really didn't matter to him.

It didn't matter, really, how it had happened in the past either. He said under his administration, he was going to prosecute people for voter fraud.

Mr. Govan. Was there anything that he said that you disagreed with?

Mr. Hebert. Not on that, no. It was in connection with the Albert Turner case, which was just ready to go to trial at that point, when we talked about voter fraud. One of his assistants was there during that conversation.

Mr. Govan. And who was that?

Mr. Hebert. I think his name was E. T. Rollison.

Mr. Govan. And during that conversation, did Mr. Sessions acknowledge that there had been voter fraud in the past?

Mr. Hebert. Well, he didn't say whether there had been or not. I made the point to him that with regard to prosecution of cases like Albert Turner that there was a concern among a lot of blacks that these are the types of things that had been happening before by whites, and that now that blacks were starting to occupy positions of political power in the black belt of Alabama, they suddenly were seeing themselves being prosecuted.

And I thought there was a lot of resentment and I asked him about that, and it was at that point he said, well, it really didn't matter to him whether it had happened before or not. If they violated the law, he was the U.S. Attorney and he was going to prosecute them. That's all I remember.

Mr. Govan. Has Mr. Sessions -- what comments has Mr. Sessions made about the role of public interest groups?

Mr. Hebert. Well, it was about -- I guess we were talking about voting rights cases, in particular. As I recall, we had talked about the Mobile case and he said that -- we were talking about, in fact, the private lawyers who had handled the Mobile case and how they -- I had mentioned to him how difficult I thought it was for people in the private bar to take on a major civil rights case in a city like Mobile because they underwent a lot of treatment by fellow members of the bar that seemed to -- they seemed to be snubbed or looked down on for having done it.

I mentioned to him that I had, in fact, heard that one of the judges had referred to one of the white lawyers for the plaintiffs as being a disgrace to his race for doing it. And I said I didn't know whether it was true, but, you know, I had heard that that was said.

Mr. Govan. And what was Mr. Sessions' response?

Mr. Hebert. He said, well, maybe he is.

Mr. Govan. Who was the attorney that they were talking about that was being referred to?

Mr. Hebert. Well, he's a lawyer in Mobile.

Mr. Govan. What's his name?

Mr. Hebert. Could I consult with this gentleman just for a minute?

Mr. Govan. Sure.

Mr. Hebert. The lawyer's name is James Blackshire.

Mr. Govan. And is he white or black?

Mr. Hebert. He's white.

Mr. Bergquist. Was this a federal judge who said that?

Mr. Hebert. Reportedly

Mr. Govan. And Mr. Sessions make any response to you in any other way with respect to that?

Mr. Hebert. With respect to Mr. Blackshire?

Mr. Govan. Yes.

Mr. Hebert. No.

Mr. Govan. Did you understand Mr. Sessions to be joking?

Mr. Hebert. I couldn't tell, to be honest with you; I couldn't tell.

Mr. Govan. Did you laugh?

Mr. Hebert. No. I remember reporting it to my co-counsel, who was down the hall in the library at the U.S. Attorney's office.

Mr. Govan. Did Mr. Sessions laugh at the comment?

Mr. Hebert. He smiled; he didn't laugh.

Mr. Govan. And you're certain that the remark that you had heard was that judge "x" considered Mr. Blackshire a disgrace to his race?

Mr. Hebert. Yes, that's what I had heard the judge had said about Mr. Blackshire.

Mr. Govan. And Mr. Sessions' response, the best you recall, was maybe he is?

Mr. Hebert. Yes, that's what he said.

Mr. Govan. Has Mr. Sessions made any comments specifically about the role of public interest groups as opposed to private civil rights attorneys?

Mr. Hebert. We were talking about the NAACP and the ACLU, in particular.

Mr. Govan. Were they involved in either of these cases?

Mr. Hebert. I believe that the Mobile voting cases that Mr. Blackshire handled were, in part, financed by the NAACP Legal Defense Fund, although I'm not certain what arrangements they had. But it was my understanding the NAACP was involved.

It was in the context of my talking to Jeff about the NAACP that he made some comments about the NAACP and the ACLU.

Mr. Govan. What were the comments?

Mr. Hebert. He said he thought that they were un-American.

Mr. Govan. Did he give a reason for his belief?

Mr. Hebert. He said that he thought they did more harm than good when they were trying to force civil rights down the throats of people who were trying to put problems behind them.

Mr. Govan. Let's take another break, please.

(Pause.)

Mr. Govan. What was your response to those comments?

Mr. Hebert. I don't know that I actually had a response. I probably -- I think I followed it up, as I recall, because I remember us talking about it for a good five or six-minute interval.

So I don't know whether I said, you know, I know you don't mean that or, you know, what do you mean by that. I remember us continuing to talk about it.

Mr. Govan. Is this an example of the type of view that you and Mr. Sessions did not share?

Mr. Hebert. Yes. In fact, I think I told him that I was asked to become a member of the NAACP by my local chapter just around that same time period.

Mr. Govan. Did he have any response to that?

Mr. Hebert. No, he didn't make any response that I can remember.

Mr. Govan. Did Mr. Sessions make any remarks about any organizations other than the NAACP or the ACLU that you recall?

Mr. Hebert. In the context of talking about it at that conversation we had, he mentioned that, you know, he thought they were un-American; I remember him using that word. I remember him saying that they were either communist-inspired -- again, he's made that comment to me two or three times, so I don't know that it was during that conversation that he used that word or whether he used like "un-American" at that point and maybe at a later conversation said they were -- I might add that when he made that comment about the NAACP on one of the occasions, he sort of ribbed me about it and followed it up by saying, well, of course, you already know how I feel on that, and he just laughed.

I might add, you know, just while we're talking about it that I just talked with Jeff not too long ago and I reminded him that I had talked to the ABA and he said, you know, I know that I've said some things to you, you know, where I spout off; I have a tendency to do that.

You know, he's told me, you know, I know that you know the things I've said and I --

Mr. Govan. When did you have this conversation with Mr. Sessions?

Mr. Hebert. Friday; this past Friday, I had a telephone conversation with him about a matter we were handling in the Southern District.

Mr. Govan. Did you call him or did he call you?

Mr. Hebert. I think I called him.

Mr. Govan. About present litigation?

Mr. Hebert. Yes.

Mr. Govan. What case?

Mr. Hebert. U.S. versus Dallas County Commission. I was asking his opinion about a possible perjury investigation that I thought the Department ought to look into.

Mr. Govan. You're absolutely certain that Mr. Sessions did not call you?

Mr. Hebert. I'm sure that I called him.

Mr. Govan. Was it Friday morning or Friday afternoon?

Mr. Hebert. I think it was Friday afternoon. He called me today, also, but I wasn't able to talk with him because I was just about to get in the elevator to come over here. I promised to send him some transcripts of this conflicting testimony from the Dallas County case.

Mr. Govan. In the course of your workings with Mr. Sessions, in your opinion has Mr. Sessions' professional conduct ever been affected by these remarks, whether said in jest or whether evidencing any serious belief in this?

Mr. Hebert. Well, he hasn't interfered in any of my cases. That would include the Dallas County case and the Maringo County case and the two Mobile cases, the Conecuh County case that I worked on, or the Monroe County case is another one that I got involved in, or Pritchard-Alabama, another case I had in his district.

He has never, you know, interfered with me in prosecuting those cases. He hasn't had much to do with them.

Mr. Govan. Have you ever experienced difficulty in cooperation with Mr. Sessions' office?

Mr. Hebert. No, no. In fact, I've been able to call up on the phone and ask Jeff if I could dictate a paper to his secretary that needed to be filed within the hour and he's been willing to help me out. That just happened within the last two months.

Mr. Govan. Do you know whether he's failed to cooperate or has interfered in cases of other assistants in the Justice Department?

Mr. Hebert. Well, I only know what happened with our Conecuh County case, but Paul Hancock is in a better position to talk about that than I am.

Mr. Govan. Okay, fair enough.

Mr. Hebert. Paul and I had talked about it and he and I both have a very fuzzy recollection about Conecuh County. It was Paul's case primarily.

Mr. Govan. You talked earlier about your views and Mr. Sessions', and you have different opinions with respect to race and the position that blacks and whites ought to occupy.

Is your opinion about that difference based upon the comments that you've related to us today?

Mr. Hebert. In part. We've had conversations in which we've talked about whether or not the right to vote includes just the right to register and to cast the ballot or whether it ought to also include the right to have that ballot meaningful.

And it was in the context, I think, really of that concept that we have, I think, a pretty different opinion about whether blacks as a group have equal political opportunity within a jurisdiction.

Mr. Govan. And I take it you're referring to voter dilution cases that are brought usually under Section 2 of the Voting Rights Act?

Mr. Hebert. Right, those are the ones.

Mr. Govan. And what has been, or is, Mr. Sessions' opinion with respect to the efficacy of Section 2 cases?

Mr. Hebert. Frankly, I don't think he understands what dilution is. Unfortunately, there's also a lot of people on the federal bench who seem to have that same view. They just don't understand how--if you can register and you can go to the polls and vote, why the Voting Rights Act ought to give you anything more than that.

Mr. Govan. Has Mr. Sessions ever expressed an opinion that the way in which wards or precinct lines are drawn is irrelevant to the determination of whether people have an effective right to participate?

Mr. Hebert. No. I think he's of the view -- at least in conversations with me, I've gotten the impression that he thinks that gerrymandering for racially discriminatory reasons is a definite way that you can harm black voters. I think he understands that.

That's a fairly simple concept. It's really the dilution questions that I think are a little tougher for him to understand.

Mr. Govan. And by "dilution questions," you mean primarily the Department's challenging of the at-large electoral schemes in some counties in Alabama, in the Southern District of Alabama?

Mr. Hebert. Right.

Mr. Govan. Has the Department, in fact, won most of those challenges?

Mr. Hebert. We have -- do you want me to stop?

Mr. Bergquist. No, if you're talking about cases that are already done. You can't talk about ones that are --

Mr. Hebert. We've prevailed in the two Mobile cases I mentioned, and we obtained a consent decree in the Conecuh County case, although that was not a dilution case. The two Mobile cases were dilution cases.

We obtained just a week ago Friday a ruling from the bench after the trial in Selma in the Dallas County case in our favor, and we obtained a successful judgment against the Maringo County Commission and School Board last September following a trial that I handled in those cases.

Mr. Hebert. Part of the Dallas County case remains pending.

Mr. Govan. So your conclusion that Mr. Sessions is reluctant in his support for some of the civil rights initiatives of the Department of Justice is based upon comments that he made to you, that he did not think it was appropriate to be filing the challenge to the Mobile at-large electoral seat?

Mr. Hebert. I don't know if it was just Mobile. I think, you know, just on conversations I have had with him over a four- or five-year period, that is the impression I get, that he doesn't think these cases have much merit.

Mr. Govan. Are there any other comments that Mr. Sessions has made that you would characterize as racially insensitive?

Mr. Hebert. Well, I have already given some.

Mr. Govan. Are there any others?

Mr. Hebert. I can't recall any specific comments he has made. As I say, the general impression I get when we talk about racial questions is that he is not a very sensitive person when it comes to race relations.

Mr. Govan. Do you know Mr. Blackshire?

Mr. Hebert. Yes, I do quite well.

MR. Govan. Has Mr. Blackshire ever been a participant in discussions or meetings in which you and Mr. Sessions have participated?

Mr. Hebert. Not any involving questions about either Mr. Blackshire or race discrimination cases. Mr. Blackshire perhaps came into the U.S. Attorneys office in Mobile when I was there as the department's attorney on the voting cases that came in to me.

Mr. Govan. And so you were essentially co-counsel with the NAACP in the Mobile case?

Mr. Hebert. We intervened as the plaintiff. They were the original plaintiffs. They had brought that case in 1975. We intervened in 1981.

Mr. Govan. Have you ever heard make any remarks about the National Council of Churches?

Mr. Hebert. No, I have not.

Mr. Govan. Have you ever heard him make remarks about any other group that you consider to be active in behalf of liberal, progressive, civil rights issues, pushing for social change, issues of race or social justice?

Mr. Hebert. I haven't heard him say anything about an organization that I can remember.

Mr. Govan. Have you ever heard Mr. Sessions make a remark about the Klan?

Mr. Hebert. Only perhaps in making a comment to me about how they are going to have a Klan prosecution in his district, something like that.

Mr. Govan. Do you recall the context of that having come up?

Mr. Hebert. No, I can't, my recollection is very hazy.

Mr. Govan. Do you recall him being proud of that prosecution?

Mr. Hebert. I really don't remember much about it. I think something may have been said to that effect.

Mr. Bergquist. We have got the two Klan experts outside.

Mr. Govan. Experts on what? Their experts is based on what? That determines on whether I want to stay or not.

Mr. Bergquist. Prosecuting the claims.

Mr. Govan. Frank?

Mr. Klonoski. I don't have anything.

Mr. Bergquist. Let me ask one brief question. Does it seem like Mr. Sessions likes to engage in contentious debate on a friendly basis?

Mr. Hebert. I would say that is true. He and I get along very well.

Mr. Bergquist. Does he like to throw a couple stingers at you to get you to debate, you know, he just likes to sit down and talk?

Mr. Hebert. He enjoys discourse in his office so you can just sort of roll your sleeves up and say let's put aside this fact that, you know, you are down here from Washington, this big official Justice Department, I am the U.S. Attorney, and let's talk one lawyer to another or from one person to the other.

Mr. Bergquist. He seems to enjoy that?

Mr. Hebert. He does.

Mr. Bergquist. Does he --

Mr. Hebert. There is a judge down in that district who is very similar already in doing that with me personally and I would say that Jeff is very similar.

Mr. Bergquist. Let me just ask --

Mr. Hebert. He is engaging, I guess would be the best way to put it.

Mr. Bergquist. Bernie Katz touched on it, but let me ask you specifically. In your dealings with him, has he done anything improper as far as handling cases or anything like that?

Mr. Hebert. The only thing that I know about is the Conecuh County case. In terms of handling the Dallas County case or the Maringo County case or the Mobile cases, he has not done anything to interfere with my prosecution of those cases.

Mr. Govan. In fact, you consider you and he have a certain camaraderie, a rapport with one another, what you characterize as your obvious differences?

Mr. Hebert. I would hope we do. I don't know if he thinks so. I think we do.

Mr. Govan. And notwithstanding that camaraderie, Mr. Sessions talked to you this past Friday about remarks that he may have made?

Mr. Hebert. Right, and it wasn't in response to my saying, you know, he once called the NAACP this or he once said blacks are that. It was, you know -- I mentioned to him that I received a call from you and he brought up the confirmation case in a conversation, at the end of our conversation about the further questions, and he said I am going to be up in your neighborhood this week and I said I would try to get together with him when he came up.

Mr. Bergquist. Mr. Sessions does not know that he is coming and --

Mr. Hebert. No problem.

Mr. Bergquist. Okay. I am just telling you that he does not know.

Mr. Hebert. I appreciate it.

Mr. Govan. And how did Mr. Sessions characterize either his remarks or what he perceived to be the implications of his remarks?

Mr. Hebert. I don't really know. All I can tell you is what he said to me on the phone, and that was he said, you know, you and I have had a lot of conversations over the years and, you know, I have a tendency to pop off. That is the exact words he used. I said I know, and I said I told you before that I had talked to the ABA about some of those very things.

Mr. Govan. You have already discussed with Mr. Sessions --

Mr. Hebert. I had already mentioned to him shortly after Mr. Fisk had called.

Mr. Govan. During the conversation you had with Mr. Sessions, did he mentioned whether he had spoken with me that Friday?

Mr. Hebert. No, he didn't say anything. I think I mentioned your name.

Mr. Klonoski. During the conversation, did he ask you not to tell everybody about these comments he had made or --

Mr. Hebert. No, no, not at all.

Mr. Bergquist. Has anyone asked you not to reveal any of the --

Mr. Hebert. No, no. In fact, just the opposite. They told me to tell the truth and tell everything I know, and I have tried to do that.

Mr. Govan. How much money do you have in your pocket?

(Laughter)

Thanks a lot.

Mr. Hebert. Okay.

(Whereupon, the above-entitled testimony was concluded.)

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TESTIMONY OF ALBERT S. GLENN

Mr. Govan. We have not met or talked before, is that correct?

Mr. Glenn. That's correct.

Mr. Govan. My name is Reggie Govan and I am Minority Counsel and investigator for the Judiciary Committee and I work for Senator Biden's staff.

We are -- the committee is preparing for a confirmation hearing on Mr. Jefferson Sessions' nomination to the Southern District of Alabama. Are you aware of that?

Mr. Glenn. I am.

Mr. Govan. And have you had an occasion to work with Mr. Sessions?

Mr. Glenn. I have.

Mr. Govan. In what capacity?

Mr. Glenn. As a trial attorney for the U.S. Department of Justice, Criminal Section, pursuing an investigation of the Southern District of Alabama.

Mr. Govan. How long have you been employed by the Civil Rights Division or the Department of Justice generally?

Mr. Glenn. The answer is the same for both, January 11, 1982, is my starting date and I have worked continuously since then.

Mr. Bergquist. Let me make one remark. If you are asked about cases that are still under litigation, you must refuse to answer.

Mr. Glenn. I understand.

Mr. Bergquist. But if the cast has completed litigation, you can discuss them.

Mr. Govan. Did you join the department immediately upon graduating from law school?

Mr. Glenn. No.

Mr. Govan. Where did you work before that?

Mr. Glenn. I worked for a Senior United States District Judge for the District of Oregon.

Mr. Govan. Is that right? Which Judge, Solomon?

Mr. Glenn. William

Mr. Govan. Okay. There is a Solomon, isn't there?

Mr. Glenn. He is also a senior judge. He is quite a character.

Mr. Govan. Off the record, people from Oregon are generally characters.

(Laughter)

What cases have you worked on with Mr. Sessions?

Mr. Glenn. It was the investigation of circumstances surrounding the death of Michael Donald.

Mr. Govan. What was your role in the Donald case?

Mr. Glenn. I will preface my remarks here by saying I believe this time it is still an open investigation, there are decisions which remain to be made concerning what will happen in this investigation, so I can only --

Mr. Bergquist. You may remark -- does this refer to any litigation at all?

Mr. Glenn. It is a criminal investigation.

Mr. Bergquist. I know, but has it gone to litigation? Has it actually gone to trial, any portion of it?

Mr. Glenn. It has not. There is an on-going grand jury investigation.

Mr. Govan. There is in fact also a part of the case that was closed?

Mr. Glenn. There have been some public matters during this case --

Mr. Bergquist. You may discuss those aspects of it.

Mr. Glenn. All right.

Mr. Govan. What involvement have you had with Mr. Sessions in the Donald case?

Mr. Glenn. He is the United States Attorney in the District of Alabama. We, in conjunction with an attorney at his office investigated that case and conducted the grand jury investigation. Mr. Sessions was involved since being continually apprised of the direction of the investigation, what was happening. While not attending all of the parts of the investigation, he was fully on top of it, so it was in that capacity.

Mr. Govan. What was your role and responsibility in the

Donald case? Whom did you work with and how were the responsibilities divided up, if there was a neat way of doing it?

Mr. Glenn. I initially came onto the Donald case in March of 1983 as the second department attorney on the case. The other departmental attorney who worked on the case was Barry Kowalski, K-o-w-a-l-s-k-i. In additiona, an attorney in Mr. Sessions' office, Thomas Figures, was assigned to the case.

The three of us worked on the investigation together and investigated parts of it and were divided in no particular way among us. I perhaps more than the others worked on the legal theory side of the federal charge in that matter, but in terms of the actual field work when we were in Mobile, there was no particular division.

Mr. Govan. Do you recall when you first began to work with Mr. Sessions on the Donald case?

Mr. Glenn. I first --

Mr. Govan. The first stage the case was in.

Mr. Glenn. I first met Mr. Sessions the first time we went to Mobile, which was the beginning of the grand jury investigation, which was about May 1st or 2nd of 1983.

Mr. Govan. Prior to that, had you had any telephone conversations with him?

Mr. Glenn. No.

Mr. Govan. What was the purpose of the meeting in Mobile in May of '83?

Mr. Glenn. In May of '83. Mr. Kowalski and I had traveled to Mobile, along with the U.S. Attorneys office, to conduct the grand jury investigation, so it was the actual beginning of that investigation.

Mr. Govan. And when you came to Mobile, the decision had already been made to convene the grand jury investigation?

Mr. Glenn. That's correct.

Mr. Govan. Do you know anything about the circumstances which led to the decision to convene that grand jury?

Mr. Glenn. Not of personal knowledge.

Mr. Govan. Do you know what Mr. Kowalski's role was in deciding to convene a grand jury?

Mr. Glenn. Mr. Kowalski was the attorney in our criminal section from Justice and he was responsible for overseeing that case from our end of it.

Mr. Govan. What was Mr. Figures' role?

Mr. Glenn. He was the attorney in the U.S. Attorneys office who was responsible for overseeing the case.

Mr. Govan. During the course of your work on the Donald case, have you ever heard Mr. Sessions make any remarks about the Klan?

Mr. Glenn. I'm aware of one incident which I know that you are leading to involving some joke about it.

Mr. Glenn. If I was leading, Ken would object.

Mr. Bergquist. No. This is an informal session, not a formal -- we are not in rules of evidence here, so you may lead the witness if you wish.

Mr. Glenn. I know what you are referring to.

Mr. Govan. What am I referring to?

Mr. Glenn. I think you are probably referring to some comment Mr. Sessions made in his office in response to information that members of the Klan were using drugs, some comment by Mr. Sessions that he used to have some sort of respect for the Klan. I can't recall with certainty whether I was present or not, but I believe I was, but I can't be sure that I'm not recalling someone's telling me about that, although I think I was there.

Mr. Bergquist. Was this in a joking reference?

Mr. Glenn. Yes. That is my next point, that it never made any impression on me because I thought it was just a joke and that is all it was and that is all I took it to mean, the way he said it.

Mr. Govan. So what you are saying you are not sure whether you were there, but if you were there you knew it had to be a joke?

Mr. Glenn. I'm pretty sure I was there. My only hesitation is someone else said it, I am not sure I was there and so it has now been some time, a couple of years.

Mr. Govan. Who was there?

Mr. Glenn. I'm pretty sure --

Mr. Govan. If you were there, you would know? You know, who do you think was there?

Mr. Glenn. I think Barry Kowalski and Thomas Figures and Jeff Sessions were there. I'm pretty sure I was there.

Mr. Glenn. Do you recall when it happened?

Mr. Glenn. No. No. It would have --

Mr. Govan. How many times have you discussed this comment since it occurred?

Mr. Glenn. I haven't really discussed it with anyone. I have heard it raised within the last four or five months in the context of Mr. Sessions' nomination, and that is where it came back to me, that from the time it was made, which I suspect was probably late '83 or early 1984, until it came up during the course of this investigation, I had not heard any comment or anything about it at all.

Mr. Govan. Had you thought about it since that time?

Mr. Glenn. No.

Mr. Govan. Who did you hear it from within the last six months that this comment was the subject of some concern or inquiry?

Mr. Glenn. Probably from Barry Kowalski.

Mr. Govan. What did he tell you?

Mr. Glenn. I think only that it had come up in the course of the investigation in Mr. Sessions' nomination, nothing very specific. That is what I recall. Really, it was just a passing remark to me one day in the office.

Mr. Govan. At that time did you have a recollection of having been present and heard Mr. Sessions say that?

Mr. Glenn. Well, that is when it came back to me and I recognized that, I knew I had heard that before and I think at that time I also thought that I heard it personally.

Mr. Govan. Do you have any recollection of there being any discussion the day of the comment or the day after the comment was made about the comment?

Mr. Glenn. Not with me.

Mr. Govan. Do you think if you had been there and had heard the comment made, that you and others would discuss the comment, at least jokingly a couple times afterwards?

Mr. Glenn. Not necessarily.

Mr. Govan. Do you know if Mr. Figures heard the comment?

Mr. Glenn. I think he did. In fact, I think Mr. Kowalski has told me that Mr. Figures had mentioned it during the coures of this investigation?

Mr. Govan. If such a comment was made in Mr. Figures' presence, would Mr. Figures have laughed?

Mr. Glenn. Probably, that is likely.

Mr. Govan. Mr. Figures would have laughed?

Mr. Glenn. Yes.

Mr. Govan. Do you have any specific recollection of what the comment was other than expressing some general respect or regard or whatever word you use for the Klan, albeit in jest?

Mr. Glenn. It was said in jest, and the word I recall is respect, I used to respect them or I used to have some respect for them. I also believe he was smiling as he said it and I took it as a joke. I did not take it seriously, that he meant that ever had -- I did not take it that he meant he had any --

Mr. Govan. What would have changed the respect that he had for the Klan. Did he express in that remark what occurred that would change his respect for the Klan?

Mr. Glenn. He didn't express explicitly. The remark was made in response to some comment made in his office about information we received that someone in the Klan had been using drugs or had drugs.

Mr. Govan. Was it a news report?

Mr. Glenn. No, I'm sure it was not a news report.

Mr. Govan. It was information that had been received --

Mr. Bergquist. That is an item under investigation.

Mr. Govan. What is?

Mr. Bergquist. It is an investigative report and we can't say anything more about it. They were discussing an investigative report.

Mr. Govan. Oh, okay. That was my next question. I didn't have far to go.

Mr. Bergquist. I'm not supposed to tell you that is what it was, but that is what they were discussing.

Mr. Govan. Okay.

Have you ever heard Mr. Sessions make any remarks similar to that since that time?

Mr. Glenn. No.

Mr. Govan. Have you ever heard people discuss alleged remarks similar to that?

Mr. Glenn. No.

Mr. Govan. Do you have a view as to the level of Mr. Sessions' cooperation in the investigation of the Donald case?

Mr. Glenn. Yes.

Mr. Govan. What is that?

Mr. Glenn. He has been cooperating as fully as I could expect, as fully as is possible. He has been fully cooperative with us in all respects in the Donald investigation from start to finish.

Mr. Govan. Have you ever heard Mr. Figures expressing dissatisfaction with Mr. Sessions' actions or lack of actions on the Donald case?

Mr. Glenn. I can't recall any specific comment that Mr. Figures may have made saying that he was dissatisfied with any particular decision by Mr. Sessions.

Mr. Govan. Do you know anything about the interaction of Figures and Sessions concerning the Donald case?

Mr. Glenn. Not specifically, no. I know that they would confer from time to time. We would -- I would or -- well, I can only speak for myself, I would occasionally call if questions or requests or something or other and I know that Mr. Figures would say he would speak with Mr. Sessions about it and he would and then we would talk afterwards. So I know that they would have interactions during the course of the investigation, and the subject would have been the subject of our investigation.

Mr. Govan. Do you know anything about Mr. Figures' and Mr. Sessions' interaction prior to your involvement in the case --

Mr. Glenn. No.

Mr. Govan. -- which is when the grand jury was convened?

Mr. Glenn. No.

Mr. Klonoski. Excuse me, did they seem to have a good working relationship as far as this case?

Mr. Glenn. That's probably hard from a definitional point of view. When I was in Mobile, we were all able to discuss the case together without any problems.

Mr. Klonoski. So things were going pretty well as far as you were concerned?

Mr. Glenn. Well, we had full cooperation from the U.S. Attorneys office. There was nothing that I ever observed when I was in Mobile between Mr. Sessions and Mr. Figures which inhibited or interfered with the investigation,

Mr. Govan. And Mr. Figures was intimately involved in that case?

Mr. Glenn. He was.

Mr. Govan. It is a case that Mr. Sessions can justify if he claims the credit for as the prosecutor.

Mr. Glenn. Certainly.

Bergquist. Hopefully. We haven't finished yet.

Is there anything else you want to say about Mr. Sessions, subjectively or his professional competence?

Mr. Glenn. Yes, I would like to add that, although my encounter with him was brief, he has been fully cooperative and fully supportive in everything that we have done in this investigation, from the beginning to the end. I have no questions at all about his credibility. He has also been an easy individual to work with. He doesn't have an ego problem, as one way of putting it. He is an easy person to approach, an easy person to bring ideas to, and he will listen to us as well. So in the limited context of working on the criminal investigation, I have had no trouble and am very pleased with his competence, his work and his cooperation.

Mr. Govan. Frank, do you have anything?

Mr. Klonoski. You said this is the only case you have been involved in with Mr. Sessions? Are there any others?

Mr. Glenn. We had one discussion a couple of months ago on another matter which has since been closed, but that was only one phone call. This has been the only case which has come up as a major investigation.

Mr. Govan. The matter that you worked with Mr. Sessions on involved a shootting at a house being shown to a black couple?

Mr. Glenn. I think that he told me about that, but I really didn't talk to him about it because that wasn't a case assigned to me. I referred him or had another attorney call him because I was not assigned to that case. There was another matter which we closed, because it was a death case.

Our practice is that all cases in which death is involved, we consult with the U.S. Attorneys office before we close them, and I had a case in which a death was involved and so I consulted with him. It really wasn't a close question and there was no basis for a federal --

Mr. Govan. What was the case?

Mr. Glenn. It involved basically the death of a black man who was found dead floating in a river somewhere in Alabama, in the Southern District of Alabama. I'm not sure where, so I can't assist and give the name of the place or the geographic location. The black man and some other people had been there for some sort of a party the night before and somebody had come in banking on the door and made a racial remark and the black man had run off, and three days later his body was found. We concluded there was no basis for federal jurisdiction in that case, and it wasn't a close case, but it being a death case we had to talk to Mr. Sessions about it.

Mr. Govan. I have nothing further.

Mr. Klonoski. I have one more. During your interaction has he done anything improper?

Mr. Glenn. Never.

(Whereupon, the above-entitled testimony was concluded.)

TESTIMONY OF DANIEL L. BELL

Mr. Govan. I am Reggy Govan and I work for the Senate Judiciary Committee, minority counsel and investigator, and I work primarily for Senator Biden. We are preparing for a confirmation hearing in the nomination of Jefferson Sessions to be a Federal District Judge for the Southern District of Alabama.

First, let me establish that you and I don't know each other and we haven't spoken before, is that correct?

Mr. Bell. As far as I know, yes.

Mr. Govan. And how long have you been employed by the Department of Justice?

Mr. Bell. Since May 1970.

Mr. Govan. Did you come to the department right out of law school?

Mr. Bell. No, I taught school for a couple of years and then I went with the department.

Mr. Govan. What are your present responsibilities?

Mr. Bell. I am Deputy Chief of the Criminal Section of the Civil Rights Division.

Mr. Govan. Are you a colleague of Barry Kowalski with respect to where you fit in the hierarchy?

Mr. Bell. That's correct.

Mr. Govan. Equivalent positions?

Mr. Bell. Yes.

Mr. Govan. Do you know Mr. Sessions?

Mr. Bell. Yes, I do.

Mr. Govan. In what capacity do you know him?

Mr. Bell. I have known him since about 1977 or '78, at which point I had a civil rights prosecution in the Southern District of Alabama and Mr. Sessions was an Assistant U.S. Attorney at the time and was quite helpful to me in the prosecution of this case, which was an extremely difficult one. I have known him since in his dealings with the Criminal Section on a return basis. I think for a time he was absent from the U.S. Attorneys office, but I am not sure what period. But in any event, I have known him in a professional way during this time.

Mr. Bergquist. Let me interject here and caution you. You may discuss cases that have completed litigation; any cases that are still under investigation or pending litigation you may only talk about in general terms.

Mr. Bell. Certainly.

Mr. Govan. Have you ever heard Mr. Sessions make remarks that you considered to be racially insensitive?

Mr. Bell. Not at all. Not at all. As a matter of fact, my impression of Mr. Sessions is that he is very eager to pursue criminal civil rights cases and he certainly was at the beginning of my acquaintance with him. The particular case I tried, the government had indicted the sheriff of

Mobile County and eight of his deputies for deliberately setting up an ambush and murdering a black inmate, an extremely unpopular case in Mobile, and there were a number of people even in the United States Attorneys office who were not too eager to be that friendly to the prosecution, especially a couple of Washington-based lawyers. And Mr. Sessions and the then U.S. Attorney, Charles Whitespunner, and his successor, William Kembrow, were all very helpful to the prosecution.

Mr. Govan. What attorneys were not eager to be associated with this case?

Mr. Bell. There were a few assistants who did not seem to be that eager to be associated with us.

Mr. Govan. Which assistants?

Mr. Bell. I don't recall their names right at the moment.

Mr. Govan. On what basis do you form that opinion?

Mr. Bell. There was a lot of talk about our chances of winning and a lot of talk about whether or not we should have even indicted the case.

Mr. Govan. Reasons going to the merits of the case, the strength, the weakness?

Mr. Bell. Well, I would says reasons going more toward the likelihood of obtaining a conviction because of the race of the victim, because of the popularity of the defendants, and those kinds of factors. It was not my impression that all of these people were all that well acquainted with the merits of the case. It was a case, as I say, that was prosecuted by the Civil Rights Division primarily. We had backup support from, as I say, the two U.S. Attorneys who were in office, one after the other at that time, and I was glad to say that Mr. Sessions was one of the assistants who was -- and I could call upon him for advice, which was frequent because I was out of town. I don't know if you have ever had to prosecute cases in that situation, but you have to rely upon local people for their knowledge of the rules of the court, for their knowledge of the jury, for their knowledge of the personalities involved.

Mr. Govan. I understand all of that, having had to try cases, but I would like to focus on what Mr. Sessions' responsibility was and how that differed with the willingness of other assistants in that office to participate in the case.

Mr. Bell. Well, you didn't quite ask that question before, but what Mr. Sessions was willing to do was to sit down and discuss with me in great detail tactical questions and other questions concerning the case. Some of the other assistants were not quite that willing. I tended to be put off, brushed aside. I don't mean to imply that all of the assistants were like that, but --

Mr. Govan. How many assistants were in the office there?

Mr. Bell. As I remember, there were five or six.

Mr. Govan. And what assistant was assigned primary responsibility for this case?

Mr. Bell. There were no assistants assigned primary responsibility.

Mr. Govan. So Mr. Sessions' involvement in the case was in some sense entirely gratuitous?

Mr. Bell. No --

Mr. Govan. It wasn't a part of his --

Mr. Bell. -- it was not gratuitous in the sense that I asked for him.

Mr. Govan. But he was not assigned responsibility?

Mr. Bell. As far as I know, he was not assigned, no.

Mr. Govan. So he was doing something above and beyond the call of duty?

Mr. Bell. That's correct.

Mr. Govan. What happened in that case? What was the result?

Mr. Bell. The result of that case was an acquittal and I suspect to no great surprise.

Mr. Bergquist. It was clearly a travesty of justice, everybody in the department acknowledges it.

Mr. Govan. A what justice, a travesty?

Mr. Bergquist. Yes. It should never have --

Mr. Govan. I am just curious about it. I am not even aware of the case. I was just curious what the result was.

Mr. Bergquist. The jury --

Mr. Bell. Well, in my view the jury should have found the defendants guilty.

Mr. Bergquist. Of course, you had a good prosecutor.

Mr. Bell. A good prosecutor.

Mr. Bergquist. But even people who observed the case, it was a simple case of local jury --

Mr. Govan. Have you ever worked with Mr. Figures?

Mr. Bell. Yes, not on a case but I have consulted with him about cases.

Mr. Govan. Have you ever tried or investigated a case with him in any formal way?

Mr. Bell. I have never tried a aase or participate in a grand jury with him, but I have discussed on-going investigations with him on a number of occasions.

Mr. Govan. Do you know anything about Mr. Figures' interaction with Mr. Sessions on cases?

Mr. Bell. On cases, very little. I know they must have worked together on a number of cases. It is a small office and I am sure they did, but I don't have any knowledge.

Mr. Govan. What was your involvement in the Donald Klan case?

Mr. Bell. Only peripheral. That was handled primarily by Bert Glenn and Barry Kowalski.

(Short recess)

Mr. Govan. Approximately how many cases have you worked on with Mr. Sessions?

Mr. Bell. Well, as I say, in this particular one, which is U.S. v. Purvis, I talked with him a lot. I didn't work directly with him on it. I have had occasion to talk with him about maybe ten other matters that we have investigated over the course of years. I have not prosecuted a case with him or been in a grand jury with him.

Mr. Govan. Is it Tom Purvis?

Mr. Bell. Yes.

Mr. Govan. He is the present sheriff?

Mr. Bell. He may still be. As a matter of fact, he -- when our indictment was handed down, I think he made a campaign ad out of the fact.

Mr. Bergquist. He made a campaign ad out of the fact that he had been indicted.

Mr. Govan. And he got reelected?

Mr. Bell. He got reelected.

Mr. Govan. During the time that you interacted with Mr. Sessions, have you ever heard him make a remark that in any way, shape or form you considered to be insensitive on racial matters, even though the remark was said in jest?

Mr. Bell. No, absolutely not.

Mr. Govan. Did you ever hear him make any remarks in jest that concerned racial issues?

Mr. Bell. No, I have not.

Mr. Govan. I have nothing else.

Mr. Klonoski. During these ten or eleven cases that you called him on or talked with him about, was he cooperative?

Mr. Bell. Absolutely. That is where I got my impression that he was interested in pursuing these kinds of cases.

Mr. Klonoski. What happened to those ten or eleven cases?

Mr. Bell. On one or two of them he suggested some additional investigation which we did. I don't believe that any of those ones that I am thinking of right now, at least I can't think of any that actually came to trial, but I never got the slightest impression that he wanted to do anything less than a full investigation of each of the cases.

Mr. Klonoski. And in fact he has always supported a full investigation of the cases that you dealt with?

Mr. Bell. Yes, at least as far as I dealt with him, yes.

Mr. Klonoski. I have nothing else.

Mr. Govan. I have nothing else.

(Whereupon, at 4:31 p.m., the taking of all testimony was concluded.)

CERTIFICATE OF NOTARY PUBLIC

I, Stephen B. Miller, the officer before whom the foregoing testimony was taken, do hereby attest that the witnesses whose testimony appears in the foregoing transcript of proceedings were duly sworn by me; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Stephen B. Miller
Notary Public in and for the
District of Columbia

My commission expires
May 30, 1990

Senator **Denton**. We were surprised, Senator Biden, that Mr. Hebert made reference to public radio carrying many of his comments, which he said he thought were going to be confidential, and they were released at 7:40 a.m.

I am not implying that you had anything to do with that, or anyone else, but it is a characteristic of the Hill, it seems, that things like that happen, and I do not think it is entirely fair.

Senator **Biden**. I share your concern in the fact that those comments—for the record, I am as surprised as you—but for the record, the fact that those comments occurred on radio 12 hours before they occurred here, could have done damage. But frankly, it appeared to be the mechanism which triggered Mr. Hebert's willingness or desire to come up here. So maybe for a change, some good came from some bad in the sense of something, although it was not confidential, in that sense that it was classified or anything, but I agree.

I can assure the Chair that this Senator was as surprised as you were, and that to the best of my knowledge, my staff was not a part of this. I did—our colleagues were aware of some of the things that were stated.

At any rate, let us move on.

Senator **Denton**. I yield to you, Senator Biden, in questioning Mr. Sessions.

Senator **Biden**. Thank you.

Mr. Sessions, if you will give me a moment here to collect my thoughts.

I want to go back if I can to the case relating to whether or not you stopped an FBI investigation from going forward: (a) Did you; and (b) if you did, can you tell me what kind of case it was and why you concluded that it is best that the investigation not move forward?

Mr. **Sessions**. When I heard that yesterday, I believed there was some sort of mixup in that allegation. I called the FBI in Mobile and talked to them. The agent tells me that he got an Air-Tel——

Senator **Biden**. An Air-Tel—an air telegram?

Mr. **Sessions** [continuing]. I do not know what that is—that's what the FBI calls some sort of communication from Washington—and that it called for an investigation of a fraudulent document that was put in a file on Department of Justice stationery that indicated that a preclearance had been given to a city, I believe, or a county, to do some act——

Senator **Biden**. A preclearance in the voting rights——

Mr. **Sessions** [continuing]. In the Voting Rights Section—when in fact, no preclearance was ever given.

And he was amazed that any such thing as this was said.

Senator **Biden**. I am sorry?

Mr. **Sessions**. That anything had been said that I had interrupted the investigation. He assured me that the Air-Tel told him to complete the investigation within 21 days and that that was done—he interviewed all the public officials in Conecuh County—and that before the investigation, one man had died he could not be interviewed, but all the rest were. They took exemplars of a typewriter to see if it was perhaps written on—all the typewriters in the clerk's office were tested, and that the report indicates no conversation with me and he indicates that he had no conversation with me, and that a copy of the report was immediately sent, according to the file, to the Civil Rights Division.

Senator BIDEN. I am a little confused, then. What do you make of Mr. Hebert's testimony just a moment ago?

Mr. SESSIONS. Right. I have been trying to think that through, and I believe there is just a major misunderstanding on that case.

I believe that the report was done and was sent up, and it must have been lost. And I may have at some point been inquired of as to what my opinion was on it, and I would have given it.

Senator BIDEN. Well——

Mr. SESSIONS. But it does not indicate that from the file at all, and the FBI always puts down the opinion of the U.S. attorney in a case like that.

Senator BIDEN. Well, I—that is confusing. Can you hold it just a second? [Conferring with staff.]

My understanding is from the testimony and from the statement by Mr. Hebert that Mr. Hancock actually talked to you.

You do not remember talking to Mr. Hancock?

Mr. SESSIONS. I remember that case being discussed, because I told Mr. Hebert as we were discussing it, the only thing I can recall about the case is that I discovered later that there was a misunderstanding. I never did contact the Civil Rights Division to apologize to them——

Senator BIDEN. Well, let me try to clear up the misunderstanding. I would like to go to the testimony given by Mr. Hancock.

He says, starting on page 11, his statement is: "The issue that seems to be on the floor was when we had requested an investigation," in the county the name of which I cannot pronounce and dare not do damage to it again, "in C-o-n-e-c-u-h County and had requested the FBI to do an investigation for us in that county, we had—the form of requesting those investigations is a memorandum from the Civil Rights Division to the Director of the FBI requesting the investigation.

> The issue involved was that the—we later found out that the requested investigation had not been conducted, and when we inquired why we learned that the United States Attorney had told the Bureau not to conduct the investigation.
>
> Committee Investigator, Mr. GOVAN. If you recall, at what stage was the investigation when the request went to the FBI for investigation?
>
> Mr. HANCOCK. I am not sure what you mean by "request". The investigation was just beginning because we were requesting the FBI to do a particular investigation.
>
> GOVAN. Had a lawsuit actually been filed against the County?
>
> HANCOCK. I believe at that time—I am not sure whether—we have had—I have been unable to piece all of this back together, and I have checked my records and I do not have any records on it.
>
> It could have been—we had a lawsuit—I am trying to think whether we had two lawsuits—we did have two lawsuits against the County, as I recall now. One involves a matter under Section 5 of the Voting Rights Act, which requires pre-clearance * * * and the other matter involved a lawsuit we filed concerning discriminatory treatment that black voters receive when they come to the polls to vote in the County.
>
> I have had some difficulty resurrecting whether the investigation at issue was in the one lawsuit or the other. At times I thought it was one, and the other times I thought it was the other.
>
> GOVAN. Do you recall the purpose of the investigation?
>
> HANCOCK. No. Because I am not able to piece it back together, I cannot. It was one of two purposes, to the best that I recall. On the one hand, it may have been

gathering information about the treatment of black voters receive when they vote in the County.

The other issue that it may have concerned was at one point in the Section 5 lawsuit, the County presented in court a letter that purported to grant Section 5 preclearance to voting changes, and the letter was an obvious forgery signed by someone on Department stationery.

It was signed with the name of someone who was listed as Assistant Attorney General for Civil Rights, and the person had never been Assistant Attorney General. It was a name we never heard of; it was a William Daley or something like that, or some Daley.

But we knew—we are crack investigators—that it was not a true letter, and we asked the FBI to try and determine who may have prepared the letter. So what I am saying—it was one of those two matters, but I just do not know which one.

GOVAN. Did you discuss this matter with Mr. Sessions?

HANCOCK. I may have. I do not recall whether I discussed it with Mr. Sessions or not; I may have. In fact, I probably did. I know for a fact that I discussed it with my supervisors in the Department of Justice and that someone later discussed it with Mr. Sessions.

Then, without taking you through the next five pages, down to line 20 on page 16.

Mr. GOVAN. I hate to be repetitious, but did I ask you did you speak about this problem?

Mr. HANCOCK. Yes, and I think I said that I may have spoken to Mr. Sessions about it at some point in the process. In fact, I recall that I spoke to Mr. Sessions about it and that he confirmed that he thought it was an investigation we should not conduct and told the Bureau not to conduct it.

GOVAN. Did he offer any reasons in support of his opinion that the investigation should not have been conducted?

HANCOCK. He did not agree with, and I do not know that I can give any more details than that. I do not recall precisely what he told me. He did not think it was an investigation we should conduct. He may have thought that we were—I do not know what he thought. He may have told me that we were just barking up the wrong tree. Those were not his words, but I do not know if he had knowledge of the local situation involved.

Now, at two points here as he goes through refreshing his recollection, he says for certain that he knows that he spoke to his supervisor, and that for certain someone later discussed it with you. And later he said, "I am sure I did speak with Mr. Sessions."

Does that refresh your recollection at all?

Mr. SESSIONS. Well, it really does not, in the sense that—I think there was a call about it. I do not think that I ordered an investigation not to be done. If I did, it would have been on the basis of an FBI agent coming to me. The agent said it did not happen who conducted it, and he conducted the investigation and he reviewed the report, and the report indicated that. They were reading from it.

It could be that there might have been a real, genuine misunderstanding on that case, and that the Department thought, and Mr. Hancock and they may have really felt that I was intervening in a way that was not proper.

Now, I think he called—I have a recollection that I was not clear when I talked to Mr. Hancock and did not correctly state to him what had happened. I really should have called him back later, when I found out that there was a mixup. That is all I can remember. I never called him back to clarify it.

Senator BIDEN. OK.

Mr. SESSIONS. Maybe the dates in the file would indicate that, when the investigation was commenced.

Senator BIDEN. Let me ask you again, so I am clear here—[conferring with staff]—in the *Perry County* case, can you tell me a little bit about Mr. Albert Turner? He was one of the defendants, right?

Mr. SESSIONS. Yes.

Senator BIDEN. Is he a well-known man in the community in the area?

Mr. SESSIONS. I had heard of him, but he was much more well-known than I realized. He had never held office.

Albert Turner is a man of great convictions. He is a decent fellow. He fights for what he believes in. He believed in the cause that he was for. And it was my conclusion and belief—the jury acted as they did, and I accept that—that the temptation of collecting those ballots was just too much to turn them in, to vote against his own slate.

He marched across the Selma Bridge with Martin Luther King. There is film that you can see where he was near the front ranks when the troopers moved into the crowd. He was there when very few people in Perry County were allowed to vote prior to the Voting Rights Act; probably less than 10 percent were allowed to vote.

Mr. Chestnut described him best in closing argument, and I thought it was an extremely effective closing argument. He said that Albert Turner had fought for what he believed in; he had not been elected to office; he did not have anything, but he was the kind of man America needed, and that we needed people who will stand up and do what they believe in, and that sort of thing.

It was sort of the gadfly of the State argument that it is necessary to have such people—I thought it was an effective argument; I think it is accurate.

Senator BIDEN. Let me ask you, you went through a number of ballots with us here—not all of them that you had, but a number of them. Was Mr. Turner indicted on each of those counts—were each of those ballots a separate count?

Mr. SESSIONS. Each ballot was a separate count, and the indictment that was filed named Turner in almost every count. Of course, he was involved in more than Hogue; there were fewer counts against Hogue than Turner—but he was charged in the Hogue counts as an aider and abettor, and Hogue was charged in the Turner counts as an aider and abettor.

Senator BIDEN. But there were counts where he was charged as the principal rather than the aider and abettor?

Mr. SESSIONS. Yes.

Senator BIDEN. Now, was he convicted on any of those counts?

Mr. SESSIONS. Oh, no.

Senator BIDEN. How do you explain that, other than the exigencies of the situation that juries make mistakes? I mean, do you have a theory? You must have walked out and said—obviously, from what you said here, you sound like you thought you had a pretty tight case, either—how do you explain it?

Mr. SESSIONS. I think the Government led with its strength, and they led with the Shelton witnesses and a few more.

A number of the witnesses after that were elderly, and some of them contradicted themselves and contradicted prior statements.

Senator Biden. Did any of them contradict what they have in that file that you read to us—any of the things you read to us, was any of that contradicted?

Mr. Sessions. Oh, no. Those were Shelton witnesses, and they testified at trial absolutely consistent with those statements, I believe—there may have been some, but the thing about it not being changed with their permission, that was true.

One of the things I evaluated, Senator Biden, was the posture of the case. I thought it was real significant that Albert Turner testified that with regard to the Sheltons, that they had a meeting, and his story was he did change the ballots——

Senator Biden. I am sorry. Say that again, now.

Mr. Sessions. He stated that he did change those ballots.

Senator Biden. Who said this?

Mr. Sessions. Albert Turner.

Senator Biden. Yes.

Mr. Sessions. To the grand jury, which was read at trial, and he said there was a meeting in the home of one of the Sheltons, and that all the Sheltons were called there, all six of them; that he was there, Earl Ford, a deputy sheriff who was a real ally of Albert Turner, and Turner's wife was there. And they discussed it, and each one of the Shelton's individually consented to the changes on the ballots and he changed some of them himself, he said. He said he happened to have glue in the car to open the ballots and to reseal them with after.

Every one of the Sheltons contradicted that in their trial testimony. They said they had nothing against Albert Turner, but there was no such meeting; they did not consent to a change in the ballots, and that sort of thing.

As a prosecutor, I think that is a good case right there. It would have probably gone better had it been those counts charged and tried on that, in about 4 days, instead of everything that happened.

Senator Biden. Now, there were 700 absentee ballots, as I understand; 540 collected by Turner and Hoag——

Mr. Sessions. Yes.

Senator Biden [continuing]. Seventy-five of the total 700 were investigated; 27 resulted in indictments, and none in conviction.

Mr. Sessions. That is correct.

Senator Biden. Now, is this—you testified earlier, and my counsel tells me that he thinks you are right, that in the shotgun case—the house being shot up, the black policemen looking at a house in the neighborhood, and that night it gets shot up, plus the white real estate agent gets threatening calls—to the extent that Mr. Govan—I asked him, "Why didn't they move?" and he said, "Well, I do not think they had enough to move on, probably"—not that it did not happen, but sufficient evidence.

Now, when you were testifying relating to that case in response to a question from the chairman, Senator Thurmond, you pointed out that the Justice Department has to make judgment calls based on the weight and importance of the matter brought before it.

Mr. Sessions. That is correct.

Senator Biden. Now, is the issue of the allegation of a number of absentee ballots being tampered with and the numbers involved—700, 540, and 75 investigated—is that on its face, does that rise at the level of the kind of matter that the U.S. attorney's office would prosecute? Obviously, we want to stop all fraud. But I mean, I am just trying to get a sense of when you weight those things, I mean, is that something that would——

Mr. SESSIONS. Yes.

Senator BIDEN. Is that a case of great weight?

Mr. SESSIONS. I have no doubt about that whatsoever. We had, I believe, 25 or so what appeared to be strong counts, strong statements. The grand jury in that District had asked for an outside agency to investigate, because——

Senator BIDEN. Well, let us speak of that a minute. The grand jury report, the grand jury report you referred to, was a grand jury report in the State of Alabama, a State grand jury as opposed to a federally drawn grand jury, correct?

Mr. SESSIONS. Right.

Senator BIDEN. And that grand jury—which I ask unanimous consent that the entire referenced report be put in the record——

Senator SPECTER [presiding]. Without objection, it will be made a part of the record.

Senator BIDEN [continuing]. That that grand jury said, "We, the grand jury of Perry County, AL, in a period of 2 days have investigated 24 cases, returning 13 indictments and questioning 30 witnesses, no-billed 5 cases, and continued 3 cases. We hereby report that the Board Inspection Committee has inspected the bonds of the Perry County officials and have found them to be properly recorded in the office of the judge of probate, the Courthouse Inspection Committee * * *," et cetera.

It goes through, and it gets down and says, "This grand jury has extensively and exhaustively investigated the voting situation in Perry County. Our greatest concern is to assure the fair election of all people." You have read this before, but I want to read it again.

"At this point, we are convinced that such an election is being denied the citizens of Perry County, both black and white. The primary problem appears to be with the tampering of the right to vote of black citizens in this county.

"The problems are"—and I cannot read it; it is a Xerox—"The problems are" something "intimidation"—is it "voter intimidation"? [Conferring with staff.] Anyway, the problem is the Xerox machine. But, "The problems are" something "intimidation at the polls and abuse and interference with the absentee ballotting process. These problem areas lie within the grey and uncertain area of the law and are generally confined to those segments of our society which are aged, infirm and disabled.

"We encourage vigorous prosecutions of all violators of the voting laws and especially would request the presence of the assistance of an outside agency, preferably Federal, to monitor our elections and to ensure fairness and impartiality for all.

"At this time, we see no reason to remain in session * * *," et cetera.

[Document follows:]

PERRY COUNTY GRAND JURY
REPORT - 1982

GRAND JURY REPORT

STATE OF ALABAMA }
COUNTY OF PERRY }

TO: THE HONORABLE EDGAR P. RUSSELL, JR., JUDGE OF THE CIRCUIT COURT OF PERRY COUNTY, ALABAMA.

We the Grand Jury of Perry County, Alabama, in a period of two days have investigated 24 cases, returned 13 indictments, questioned 30 witnesses, no billed 5 cases and continued 3 cases.

We hereby report that the Bond Inspection Committee has inspected the bonds of the Perry County Officials and have found them to be properly recorded in the Office of the Judge of Probate.

The Courthouse Inspection Committee has made a tour and inspection and find the following:

1) The entire building needs a new paint job throughout.
2) There is a need for new chairs, desk and carpet in the Tax Collector's Office.
3) There is a need for some plaster repair work to be done in the Tax Assessor's Office as well as the same repair work in the Mapping Room.

The Jail Inspection Committee has toured and inspected the Jail and does hereby report that the Jail is in better shape than it has been for a number of years. There are some repairs needed which are as follows:

1) There is need for plaster repair.
2) There should be replacement for all broken and missing window glass.
3) First floor shower and toilet is in need of repair and painting.
4) There is need for a light in the laundry room.
5) Broken urinals in the cells need to be replaced.
6) There is a need for lights in the west hallway.

This Grand Jury has extensively and exhaustively investigated the voting situation in Perry County. Our greatest concern is to assure a fair election for all parties and all people. At this point we are convinced that such an election is being denied the citizens of Perry County, both black and white. The primary problem appears to be with the tampering of the right to vote of the black citizens of this county. The problems are dual: intimidation at the polls and abuse and interference with the absentee balloting process. These problem areas lie within gray and uncertain areas of the law and are generally confined to those segments of our society which are aged, infirmed, or disabled. We encourage vigorous prosecutions of all violations of the voting laws and especially would request the presence and assistance of an outside agency, preferably federal, to monitor our elections and to ensure fairness and impartiality for all.

At this time we see no reason to remain in session, therefore, we request that we be hereby adjourned.

Respectfully submitted on this the 20th day of April, 1983.

JURY FOREMAN ________________

SECRETARY Herbert L. Burdell

Filed in open Court
April 20, 1983
[illegible] Robertson, Clerk

Senator BIDEN. Now, you took this, I assume, as a call to action when, at a later date, alleged improprieties were raised with your office; is that correct?

Mr. SESSIONS. Senator Biden, of course they said it was "grey and uncertain areas of the law," and the people involved in the case that we prosecuted were involved in that 1982 investigation, or at least were certainly called as witnesses and knew about the investigation. So I want to point that out. We did not prosecute on that year.

We never did a thorough investigation—but my feeling was that the problem would not continue; that the people would straighten up, clean up their act. And I saw no reason to prosecute after the county had not prosecuted, and we did not.

It was later when we got a call again that I did not feel that I could ignore this call from this grand jury, a call from the district attorney, and——

Senator BIDEN. Now, did the district attorney ask you?

Mr. SESSIONS. The district attorney called me, because he did know me—although we were not close friends at all at that time—he called me, with Reese Billingslea, a black elected official who was on that ballot, in his presence, and Mr. Billingslea had called the Civil Rights Division, and they had said for him to call me if there was fraud.

Senator BIDEN. OK. What I am trying to deal with is there has been the allegation made that you, with some sense of glee and anticipation, went out and dealt with what is a petty case when in fact it would have ordinarily fallen to the county prosecutor. I am trying to be fair to you to let you make your case as to why didn't you say—I am not saying you should have—I want to know why you did not say to the district attorney, "Hey, look, the grand jury looked at it once, although they said they wanted outside folks to look at it, and they did not find reason to indict at that time. You have got the guy there. Why don't you move forward?"

Mr. SESSIONS. The grand jury provides that answer. There were obviously two factions in Perry County. Some would suggest there is a white and black faction. That is not true. There may be some of that; do not get me wrong—but it is clear that Billingslea and Kinard got at least 50 percent, if not more than 50 percent, of the black vote. They are the ones that are upset because of this other faction.

It is difficult for a local district attorney and a local jury, who knows all the people involved, who may be on one faction or another, to handle a case like that. It is like the civil rights cases in the past where the Federal Government is an objective outside force.

Senator BIDEN. I am not arguing; I just want to make sure. So the last point on this, and I will leave that issue—not the whole Perry County thing, but that particular aspect of it—is that the local district attorney, county district attorney, in addition to calling you to acquaint you with Mr. Billingslea's—was it Billingslea——.

Mr. SESSIONS. Billingslea, right.

Senator BIDEN [continuing]. Mr. Billingslea's accusations and concerns, in addition to that, did he say to you, "Mr. Sessions, I hope you handle this case. We do not want to handle it. You handle it"? I mean, what did he say, beyond——

Mr. SESSIONS. He indicated that the case was such that it needed an outside force to investigate it, yes.

Senator BIDEN. OK. Now, Mr. Johnson is the attorney we are talking about, right?

Mr. SESSIONS. Yes.

Senator BIDEN. And Mr. Johnson sent you a letter on September 2, 1982, and then he sent you a letter on August 31, 1984, and then, September 28, 1984. And I would like to read from one, if I may.

> Re voting fraud investigation—

This is from the September 2, 1982—

> Re voting fraud investigation, Perry County, AL.
>
> My office has received several complaints of irregularities in regard to the upcoming election on Tuesday, September 7. These complaints range from improper casting of absentee ballots to possible fraud in reidentification.
>
> The most serious allegations concerning interference with absentee balloting include fraudulent receipt and marking of ballots. The large number of absentee ballots requested by voters in this county, in excess of 800, with 7,857 registered voters, creates the possibility that fraudulent absentee ballots may make a significant difference in the results of the election.
>
> My staff has looked into the allegation, and the reports indicate the need for an extensive investigation in the voting process in Perry County. My office does not have anywhere near the manpower to conduct such a largescale probe. Additionally, I feel it would be best that an independent agency from outside the county conduct the probe so as to avoid any possible hint of favoritism or partiality.
>
> Therefore, please consider this letter to be an official, urgent request for all possible assistance in conducting this investigation. I cannot overemphasize the importance and the urgency of this request, for without the help of your agency, my office cannot actually investigate all the allegations and possible ramifications. Without thorough investigation, I think the results of this election will continue to be showered in accusations and acrimony.
>
> My office staff has prepared reports specifying the evidence uncovered so far, and these reports will be made available upon request to aid your evaluation of the seriousness of this situation.
>
> Please contact me with all possible dispatch regarding this case. It is clearly of the essence.
>
> Very truly yours, Roy L. Johnson.

Essentially the same letter was sent in August 1984 and September 1984.

Now again, for the record, why did you—if it was you—although it was sent to the voting fraud investigator—why did you not move in 1982, but then moved in 1984?

Mr. SESSIONS. In 1982, Mr. Johnson, I believe, told me that there were problems involving two ballots, or a few ballots, that were altered that he had proof of, and there were other irregularities. But I did not feel that those irregularities were such that it demanded a Federal investigation. He conducted one, and I respected his investigation. They saw fit not to go forward, and I said fine. I thought also, sincerely, that you would not have that problem in the future after he had investigated and everybody had become acquainted with the rules and the law of voting absentee.

In 1984, we had complaints from black officeholders. There was an election contest filed. Three of the four contestees were black. They were the ones that were complaining. They were afraid that the election was going to be stolen from them. They were very concerned about it. And I do not believe a U.S. attorney could refuse to investigate when the district attorney says his partiality is subject to question, because he has got to run for office in the county, and Albert Turner would be an opponent of his, certainly, if he investigated him, or maybe he already was on the vote.

So it was transparent to me that it was appropriate for the Federal Government to investigate.

Senator BIDEN. Did you seek and/or receive the reports that were referenced in these letters?

Mr. SESSIONS. I do not——

Senator BIDEN. For example, he says that, "My staff has prepared reports specifying evidence uncovered so far, and these reports will be made available upon request to aid your evaluations * * *"

Did you receive those reports?

Mr. SESSIONS. I never evaluated them. I believe we received some records in our office after his grand jury in 1983, a good bit of records. I never evaluated those, and I——

Senator BIDEN. What made you move forward, then?

Mr. SESSIONS. We did not, in 1982.

Senator BIDEN. No; I know. In 1984, though. There were reports then, too.

Mr. SESSIONS. In 1984, what happened was I believe the FBI agent who was in Selma, a few miles from Marion, received those records. I do not believe contemporaneously with that letter, he sent records to Mobile, which is 170 or so miles from there. It is possible.

Senator BIDEN. Back to what the basis of this thing is. In the affidavit that Johnson gets from Mr. Kinard, one of the candidates in the election, the affidavit does not seem to say much. I may be wrong, though. Let me read it, here.

It says:

> On August 29, 1984 at about 11 a.m., I was driving south on Clement Street in the city of Marion, AL, canvassing for my campaign.
>
> At 228 Clement Street, I noticed the Perry County Sheriff patrol car assigned to Chief Deputy Earl Ford in the driveway. Leaning over the right front fender was Wilburt L. Turner, a candidate for the election as tax assessor of Perry County. In front of the radiator and also leaning over was Albert Turner, president of the Perry County Civic League. Leaning over the left front fender was Chief Deputy Sheriff Earl Ford. On the hood of the patrol car was a brown cardboard box, about 2 feet by 4 feet by 2 feet, filled and overflowing with mailing envelopes of the type that absentee ballots are made of. They immediately dispersed.

And he says where they dispersed to.

> After conferring with my brother, Howard L. Kinard, principal of the West Side High School, on campaign matters for a few minutes, I departed and observed Turner in his pickup truck closely as I got into my car * * *.

You concluded that that is the kind of—here, you have now a grand jury investigation that did not come up with sufficient evidence to indict anybody in 1982. You have now, 2 years later, candidates standing for election giving affidavits to you all about whether or not you should move forward. But the affidavits do not seem to be very compelling. It seems to me the most compelling thing you have here is a district attorney who feels he is in a pinch politically.

I mean, is this the evidence that you moved on—a box sitting on a——

Mr. **Sessions**. No. I did not see—the affidavit that is filed there was not really given to me. That affidavit was not prepared, to my knowledge, by Mr. Johnson. It was prepared by the lawyer for the three black candidates who were filing an election contest.

Senator **Biden**. But Mr. Johnson told you he had these affidavits, didn't he?

Mr. **Sessions**. He told me that they were filing for an election contest. I am not sure he mentioned they were attaching affidavits to it or not. But what he told me on the phone was more than that. He told me there was a systematic campaign to collect ballots and change them, and suggested at one point a search warrant of——

Senator **Biden**. I understand that. What I am trying to get to here is that if a county attorney from any county called you up and said, "We have systematic fraud down here; you really should investigate. And let me tell you what I think the fraud is. It relates to absentee ballots, it relates to this, it relates to that." I just assumed that the U.S. attorney's office would say, "Well, fine. Can you send me up some affidavits, some evidence, something to sustain your assertions that you want me to get into this, as to why you want me to get into this?"

Mr. **Sessions**. Not necessarily, just to commence a very preliminary investigation, No. 1.

Senator **Biden**. OK.

Mr. **Sessions**. No. 2, he is 170 miles away; we are talking just a day or two before the election, and something had to move fast on it.

No. 3, we did not do anything but really very low key. We observed the post office. And let me tell you what really commenced an investigation. If the ballots had been opened, and there appeared to be no irregularities in them, an investigation may have gone no further.

Senator **Biden**. Opened at what point?

Mr. **Sessions**. When the absentee ballot office opened and counted the ballots; there appeared to be some 35 or so that had significant changes as you have seen on this ballot, plain to anyone——

Senator **Biden**. Out of 700?

Mr. **Sessions**. Yes. There were 75 that had some form of changes on them out of the 700.

And there seemed to be a pattern in these dramatic changes, from opponents to Turner candidates to Turner candidates, although it was not certain, but it did definitely appear.

So, Mr. DeSanto was involved in that, I know, and everybody discussed it and decided that every ballot that was changed, whether it was a Turner ballot or not, the voter would be interviewed to see if they consented to the change, and 75 interviews were done.

Senator **Biden**. OK. I think anybody who changes a ballot really violates the spirit and the letter of what we are all about in this country.

Mr. **Sessions**. Well, it is horrible to change somebody's vote.

Senator **Biden**. But having said that, keep in mind my confusion here. You started off with this district attorney saying there was widespread, significant corruption.

Mr. SESSIONS. My assistant told me that in 1982, there was some significant evidence of corruption and that we could possibly have proceeded with a case in 1982.

Senator BIDEN. Now, this widespread, significant corruption narrows down to, out of 700 ballots that were cast, 75 had some marking on them, and 39—I think that was the number—39 had more than one marking, and 27, after interviewing 75 people, warranted—in other words, I am trying to get the magnitude of this.

Mr. SESSIONS. I understand that. I do not consider that small at all, to have a person's ballot—one good instance of that is serious. If I come and pick up your ballot, and you voted for one person, and I walk over here and change it and cast it in, that is horrible. That is not just a petty crime. To do that 25 times is a systematic crime of great magnitude. I honestly believe no U.S. attorney under these circumstances could have declined to investigate.

Senator BIDEN. OK. Now, let me get this. How many times since you have been the U.S. attorney has your office been contacted by individuals, whether they are elected officials or just citizens, voters, suggesting that they have been intimidated, or there has been fraud, or there is something wrong in the electoral process?

Mr. SESSIONS. Well, there is hardly an election that goes by that on election day, the calls do not come in. But you can tell whether you have got an indice of some sort of reliability there or not, in most of those cases.

We had one investigation that I frankly did not know about when I talked to Mr. Govan, in which I believe about six or eight people were interviewed, and I am told they were white, in a rural county, and it allegedly involved some buying of votes, but it just could not be established, and it did not go forward.

Senator BIDEN. Why couldn't it be established? Obviously, this could not be established, either, as it turned out.

So rather than whether it could or could not be established, what made you reach the judgment in that case that it could not be established, the vote buying?

Mr. SESSIONS. Senator Biden, I think there are some pretty clear decisions and there are some grey areas. In the case that I am talking about that we had eight interviews of people, it was an anonymous tip, and they went out and interviewed everybody. In that case, I do not believe any U.S. attorney in the country would think it was worthy of prosecuting.

Senator BIDEN. Look, all I am trying to get at here is I want to get a measure of the man here. I want to figure out how you approach these things. And so I would like to—let us stipulate for the sake of this discussion that in fact your efforts in Perry County were totally warranted, that no U.S. attorney, black, white, with little or no experience to years of experience, would have done anything other than what you did. Just for the sake of this, let us stipulate to that.

Give me an example, or give me your rationale, why in the case of these eight voting purchase allegations, that you reached a different conclusion.

Mr. SESSIONS. First of all, in the purchase voting case, it was not proved that there was any purchase. There were allegations of it, but it was never proven.

Senator BIDEN. Well, obviously, it was not in this case, either. I mean, let us not talk about proof because obviously, you did not prove in your case. I am prepared to stipulate you should have brought it, but there was no proof, obviously.

Mr. SESSIONS. There was proof, Senator; it just did not satisfy the jury.

Senator BIDEN. OK.

Mr. SESSIONS. Mr. Stavis argued brilliantly that a jury is a safety valve, that Mr. Turner was a hero, and a jury has a right to forgive. As an attorney and a prosecutor, I know you know that you cannot be certain what is going to happen with a jury, and as a lawyer, I know you know that you can evaluate cases, and there are some cases you would not have any disagreement on. I do not believe any attorney who evaluated, from my point of view, would have disagreed.

Senator BIDEN. I am prepared to stipulate to that. But I think we should act like lawyers and use the terms of art precisely.

Mr. SESSIONS. All right.

Senator BIDEN. I am used to saying when there is proof that that means that under our legal system, the vehicle for determining whether or not there is proof has concurred with my judgment, whether it be a judge or a jury.

How many of these indictments were submitted to the jury—I mean, how many counts were submitted to the jury in the *Perry County* case?

Mr. SESSIONS. I believe eight counts were dismissed.

Senator BIDEN. Eight counts were dismissed.

Mr. SESSIONS. Out of the 29.

Senator BIDEN. So 21 counts——

Mr. SESSIONS. Do not hold me to that, but that is about right.

Senator BIDEN. But let us get back to the case of the—which I know nothing about; I am seriously inquiring—the case of the vote-purchasing allegations. How did you conclude—why did you conclude that there was no proof—that no one said there was purchase?

Mr. SESSIONS. Yes. They went out and interviewed them, and nobody would say they were paid or anything.

Senator BIDEN. That is all I am trying to find out.

Mr. SESSIONS. That is right. I am sorry. The Department of Justice also on the case in 1984, Mr. DeSanto came down at one point, read all the grand jury statements of the witnesses, he drafted the indictment. He told me he thought it was a very strong case, not a close case, a very strong case.

Senator BIDEN. Now, with regard to the issue of whether or not you, the Federal Government, subpoenaed the ballots, and when you subpoenaed the ballots, can you refresh my recollection on that, in the *Perry County* case?

Mr. SESSIONS. Yes. In the *Perry County* case, I cannot recall the date that we issued a subpoena. My assistant was conducting the investigation on a daily basis. Apparently what happened was Mr. Johnson subpoenaed the ballots and then he allowed the agent of the FBI access to those ballots, and they conducted the investigation.

Senator Biden. I am sorry. I apologize. I was checking on something, and I did not—would you repeat that?

Mr. Sessions. Yes. Apparently Mr. Johnson——

Senator Biden. The county attorney.

Mr. Sessions [continuing]. The district attorney—I understand that he did issue a subpoena for the ballots. He got them; they conducted an investigation——

Senator Biden. On election day.

Mr. Sessions. Yes. He got them after they had been counted and—well, it may have been the next day.

Senator Biden. Yes, OK.

Mr. Sessions. He got them and counted them, or he got them and analyzed them. He made those available to the FBI when they noticed the pattern, and the FBI agent went over from Selma and they examined the ballots, and plans were commenced to do an investigation. At some point, I asked, "Has a subpoena been issued for the ballots?" and they said no, and I thought it was appropriate to issue one on behalf of the United States. And I am the one, I think, who said to my assistant, "I think you ought to issue a subpoena for the ballots."

Senator Biden. Do you know why a subpoena—you know, you checked out the courthouse; you watched the ballots being mailed, the 500 or so ballots being mailed; you had reason from that in your testimony to believe that there were improprieties. Why didn't you issue a subpoena that day, or the next day, for the ballots?

Mr. Sessions. Well, the matter was under the direction of my assistant, and I will take responsibility for my office. But that was the kind of decision that you expect a 10-year assistant to make. I do not think, in defense of him, that there was any requirement to issue a subpoena at all.

Senator Biden. No. What I am trying to get to here is the continuity of reasoning relating to how you got into and pursued the case, so I can set it to rest in my mind at least.

You have made the case that based on 1982 grand jury statements, based on the 1984 call from Mr. Johnson, based on the allegation by the two people standing for election, the two black men who made the allegation, that you believed there was the prospect of a sufficiently serious case here that warranted you making this initial inquiry and the inquiry related to observing the post office the night before the election. You have taken me up that far. And then the next thing it would seem to me that would have been done—I am not arguing it should or should not have been done, it did not have to be done; I am not making that argument; I do not know enough to know, to be honest with you—but I am just curious why. Also in this mix is that Mr. Johnson did not want to handle this thing because of all the reasons you said—he might be standing for election, he might get into the middle of it. But yet, Johnson subpoenas the ballot. Obviously, Turner and everyone else, who were supposedly the reason why Johnson called you—he does not want to have to handle it locally, which I understand, I understand—but yet he goes and issues the subpoena. Now, obviously, to me that is like a great, big red flag saying, "Hey, Turner, I am the guy."

If Turner were going to engage in retribution in the next election, it sure in heck would seem to me, if I were Johnson and I worried about that, that I would not issue the subpoena. I would want to be able to sit back here and say, "Hey, old buddy, you are a great hero, and I hate to see this happen to you, but that is the U.S. attorney's office."

Mr. **Sessions**. It was not so much that he was afraid of Turner knowing he was participating in the investigation. It was that the effectiveness of the prosecution is affected if you are prosecuting somebody who is your political opponent and who is capable of raising votes to defeat you.

Senator **Biden**. Now let me ask you, was Turner a political opponent of Johnson?

Mr. **Sessions**. I assume so, since when he did not like somebody, as Billingslea and Kinard said, there is no question about it. And Mr. Johnson had investigated him in 1982, and my impression was that Mr. Johnson would not have been on Mr. Turner's slate.

Senator **Biden**. OK. Now, as I am reconstructing this, you have a guy named Johnson who investigates a powerful civic leader—I do not use that civic—that sounds—I mean, I want to be dispassionate—investigates a well-known political figure in his county. The investigation comes to naught. That well-known political figure knows the local county attorney, district attorney, has done it. Now there is apparently some—if there was not already—some political animosity, even potentially bad blood.

I mean, if you all are like we are in southern Delaware or any part of my State, it would be likely that there would not be a lot of love lost.

Now, 2 years later or thereabouts, this U.S. attorney says in effect, "I know something is going on down here. I was not able to prove it myself 2 years ago. And the guy that I know that is putting this down is a guy that you know is my political opponent. I have got two of his political opponents sitting here, telling me the he did something bad." And you say, "OK. That is enough to move forward," without asking, "Well, give me some proof; give me some data."

I mean, did you ask yourself when you sat there, is this just the local district attorney trying to nail his opponent, and he wants you to do it?

Mr. **Sessions**. We had examined evidence in 1982, according to my assistant, that indicated serious voter fraud. You have to rely on district attorneys and what they tell you, also. A U.S. attorney who just refuses to respond to the request—I had already refused once to respond—really is not doing his job.

We did tale just a preliminary action, and when the ballots were opened, there were what appeared to be patterns in the alterations. And only the ballots that were changed—the people whose ballots had changes on them—were interviewed. If it were only one or two changes, or three or four changes, and the voter said, "It was not with my permission," and those were elderly voters or something like that, I imagine that investigation would have ended right there.

Senator **Biden**. Well, look, I guess I do not know enough about the case. All I know is that you make a convincing case that there is reason to go forward. But a jury reached the conclusion that there was not any reason to find anybody guilty for whatever the rationale. And I do not have the opposing attorney here to make the case that your characterization is something less than airtight.

And so I get into thinking to myself, knowing how these things go on in other—maybe it does not happen in the South a lot, but these kinds of things happen in the border States and in the Northeastern States—I mean, I am not far from the Stillman's gym of American politics, Philadelphia. I mean, I understand politics a little bit. And let me read this characterization in the Advertiser, Montgomery, AL, February 11, 1985, by Alvin Benn, B-e-n-n, Advertiser staff writer.

He says, "Johnson, however, said the ballot numbering was done properly, and within the law. He said that several Perry County candidates who had opposed the group led by Turner asked him for 'voting safeguards' before the September 4 Democratic primary." This is Johnson: " 'They were contesting the election in advance because of violations they believed had been committed in the past, Johnson said. 'They came to my office for help.' "

Now, here you have a man who has a reputation for being one of—for a guy like me—one of the heroes of the civil rights movement. I remember hearing about him being the guy who was there at Martin Luther King's funeral and led the cortege. And he is the guy who went across the bridge and was in the front, et cetera.

And here you have a guy who is obviously, among those of us involved in the civil rights movement, a national figure, not just a local figure. And a political opponent of his who tried once before and failed comes with two other opponents of his, whether they are black or white—in this case, they are black—and says, "This guy is stealing the election from us."

And I have yet to hear, other than that assertion, what element of proof you asked for to sustain why you anticipated in 1984 that this was going to be stolen, or might have been stolen. That is what I am trying to get to.

Mr. SESSIONS. Yes——

Senator BIDEN. But you were not, and you did say, and you are reason this is an issue with you, as it would be—I mean, if you had been on the bridge at Selma—not that you should have been; you probably were not around; you were probably too young to walk then, and I am not being smart when I say that—but if you had been on the bridge at Selma, and you had never said anything in jest or otherwise, like has been brought out here today, then people would probably—you know, you would not be burdened with this.

Mr. SESSIONS. Right.

Sentor BIDEN. But you were not, and you did say, and you are burdened with it now. And so what I am trying to get to is the motivation, whether or not you in fact are willing to take less assertion of proof because of a prejudicial view you have, or whether or not you in fact had sufficient proof, regardless of whether or not you may have a prejudicial view.

Do you understand what I am getting at?

Mr. SESSIONS. For example, Senator, we were told in 1982 that they send in a request for an absentee ballot, and the officials send you an absentee ballot by mail. We were told that there were 100 or more applications for ballots, sent on which the names were forged.

We were told, and my understanding was, that there were at least two colorable claims of alterations on ballots that Mr. Johnson sought an indictment on in 1982. In 1984, we were coming up on the same——

Senator **Biden**. Let me stop you there. Mr. Johnson, a political opponent of Mr. Turner, says those things to you, goes to his own grand jury and does not get an indictment.

Now, my problem is you seem to believe a political opponent more than you believe a grand jury.

Mr. **Sessions**. Well, I am told that the grand jury split right down the middle, almost, one vote difference.

Senator **Biden**. On what grounds, what basis?

Mr. **Sessions**. I do not know. I assume that they felt that it was not enough, or they——

Senator **Biden**. No one told you it split down the middle on race? Did anybody ever tell you——

Mr. **Sessions**. I understood that that was part of it; yes. So that grand jury issued that report, though, and called on us to investigate, and we did not, because the situation was not serious enough. We did have——

Senator **Biden**. It was not serious enough then. So what is it, what proof did you have that made it change to convince you that it was now serious enough, other than the assertion of a white district attorney who is feuding with a black political leader, and two black opponents of that person saying that they expected the election to be stolen?

Mr. **Sessions**. I am getting tired.

Senator **Biden**. I do not blame you. So am I.

Mr. **Sessions**. Let me explain it to you this way, and you need to understand this——

Senator **Biden**. I want to understand.

Mr. **Sessions**. We did not present a case to the grand jury. We did not seek an indictment. All we did was observe the post office to see if anybody did bring the ballots, as they said their information was that night, and if an investigation were to be successful——

Senator **Biden**. Now, you found that an unusual occurrence all by itself, the fact that they bring 500 ballots at one shot and drop them in the—that, all by itself, is unusual enough, is that right?

Mr. **Sessions**. Oh, certainly—not necessarily unusual enough, but you had the prior problems in 1982. You had Mr. Kinard's statement about torn up envelopes that he had seen, and you had allegations by Mr. Billingslea that he had information that ballots were being altered. And so all we did was observe the mail; we noted which ones were mailed by Turner and which ones were mailed by Hogue that night so they could be traced back, and the ballots were observed. Of the 700 ballots, only 75 people were interviewed, and those——

Senator **Biden**. Well, that is only because only 75 ballots were changed, right?

Mr. **Sessions**. Had changes, right. But they were pretty dramatic changes, wouldn't you say, Senator, as is shown on that chart.

Senator **Biden**. You know, I am not arguing that. I am just trying to——

Mr. **Sessions**. And so from then on—so each step sort of led to the other. And I do not believe that you could do otherwise.

Who else can investigate? It is either the district attorney or the FBI. Who is better? The FBI? Who could have the most credibility in the community? Who has the most manpower to handle it?

Senator **Biden**. OK. Let me—and I will yield to my colleague again and come back to my questions—but let me just finish up with a couple things here for now.

The Voting Rights Act, the intrusive piece of legislation. You explained what you meant by intrusive. Do you think it is a good act? You said "intrusive, but necessary," I thought.

Mr. **Sessions**. I think it is absolutely necessary.

Senator **Biden**. As it is now, you think it is necessary.

Mr. **Sessions**. So far as I know. I understand there is some dispute about a clause or two in it about——

Senator **Biden**. Preclearance, it is called.

Mr. **Sessions**. Well, no.

Senator **Biden**. That is part of the problem—is it or isn't it?

Mr. **Sessions**. Well, I think everybody pretty well accepts that, although preclearance—there are various degrees of what needs to be cleared, and good people can differ. But the Voting Rights Act clearly enfranchised a disenfranchised substantial minority.

Senator **Biden**. Thanks. I will let my colleague ask some questions and then come back.

Thank you.

Senator **Heflin**. Mr. Sessions, we have mentioned Mr. Thomas Figures, and I indicated that Mr. Figures worked in your office for 4 years. When he left, was there an unpleasant relationship between you and Mr. Figures?

Mr. **Sessions**. Let me explain it this way. Mr. Figures is a fine attorney. He argues a case beautifully. He prepares his cases thoroughly, to a fault, perhaps. And he does a beautiful job of handling those cases. And I respected that. He is meticulous about his work, and he handled a number of different cases in the office.

He is not an easy person to work with, in all honesty. One of the things that came up was these cases that the FBI had been talking to other attorneys about, civil rights cases. And that caused him concern.

I do not think Mr. Figures ever knew that I talked to the FBI agent—I think I told him I had taken care of it. But I specifically talked to the FBI agents who normally handle civil rights cases and told them never in the future to present them to anyone but him. I had promised him that, and I meant to see to that. I went to the FBI supervisor and told him that. But I think that was something there.

He severed all communications with the office after he left. People in the office would try to speak and so forth. But I was surprised when he quit. We were up in Selma, trying the case, when I first heard he was quitting, and it was quite a shock to me.

Senator **Heflin**. Well, as I understand it, there is, in the operation of the U.S. attorney's office, a procedure by which, when a complaint is being investigated it will often be turned over to an assistant U.S. attorney such as Mr. Figures. And there is a process by which the U.S. attorney's office can make a recommendation to the Justice Department that they decline to pursue a case, and they generally forward that recommendation to the Justice Department for final action.

It has come to my attention that you have remarked to a member of your staff—and I assume this is Mr. Figures, yet I might be wrong—that you wish that you could decline all civil rights criminal cases. Do you recall ever making that statement to Mr. Figures—or to any member of your staff?

Mr. SESSIONS. No, sir. And in fact, while I have disagreed on—really, not that much disagreed—I probed hard and expressed misgivings about some of the vote dilution cases that the Department has filed and asked my signature, and I believe I have signed every one. That is my duty to be sure of the pleading before I sign it.

But as to criminal civil rights, I feel pretty strongly about that. I feel very strongly about that. As a matter of fact, I spoke to a chief of police association that was meeting in Mobile, the State chiefs of police, and I told them in almost these exact words, I said, "We are going to continue our investigations of civil rights. We want to work with police, but do not think there is going to be a change on that." And I called on them, and I pointed out to them—and I remember saying this—it was just 20 years ago that blacks were disenfranchised all over this country down here. They have been bused by police, as you well know. They do not necessarily trust the police to investigate themselves. And they have a right, and it is proper that the FBI will be called on and respond to those investigations, and that will happen and continue to happen.

Senator HEFLIN. As I understand it, there are statements that will probably be brought up by other witnesses, and my purpose is to give you an opportunity to respond to them; at least the testimony lays a predicate for an issue for the committee to consider—that on an occasion when there was a recommendation to pursue a case which you wanted to decline or which you did not want to pursue, you are quoted as having said, "You must think this is New York. This is Alabama."

Did you make such a statement, and if so, do you have any explanation?

Mr. SESSIONS. At first—well, I think that I may have said that in regard to evaluation of a case that Mr. Figures had indicted Sammy Murray, and then he came to me and asked that it be dismissed, and we were discussing the jury appeal of it, and he was concerned about some of the jury appeal. I may have made that. I did not really think anything significant about that comment.

Senator HEFLIN. Who is Sammy Murray?

Mr. SESSIONS. This was an individual with the Corps of Engineers. Mr. Murray had, unbeknownst to Mr. Figures or me—actually, I never knew the case was even in the office; it was brought in by an FBI agent a few days before a grand jury. And Mr. Figures, as he has a right to do and as I encouraged, presented that case a few days later to the grand jury. I signed the indictment with confidence that it was an OK case.

I say it happened that fast. That is my general recollection of it.

After that, it was discovered that Mr. Murray had been in litigation with the Corps of Engineers over his personnel situation. Apparently, he had been ordered to move from near Demopolis to a place in Mississippi with the Corps of Engineers. He moved over there and filed a claim for the moving of all his furniture, $2,000 or $3,000, and that claim went in to the Corps of Engineers management. And their inspectors or whatever found that he did not move his furniture, that he never moved, because he had his transfer on appeal, apparently. So that was false claim. It appeared to me on the face of it to be a clear false claim.

So none of us knew that at the time. Later, his lawyer called and said, "This is a vendetta against Mr. Murray." He said that, "At any rate, you ought to dismiss this case," because Mr. Murray was told by someone at the Corps of Engineers that if he did not go on and submit his claim for furniture, he could not file later, if he was going to wait too long. So that is why he was forced into filing that claim.

Mr. Figures said based on that, and the fact that the Merit Systems Protection Board had criticized the corps for their handling of Mr. Murray that he wanted to dismiss the case.

We discussed it. I suggested that Mr. Murray be inquired of as to who at the corps told him to go ahead and file the claim, and if that was true, we would dismiss immediately. But I was not inclined to dismiss because he had been wrongfully transferred.

Senator **Heflin**. I understand that on approximately four occasions you turned over to Mr. Figures records of investigation and urged Mr. Figures to recommend a declination, and when Mr. Figures concluded that the cases warranted reinvestigation, you assigned the cases to another attorney, who then recommended declining the cases; that the files were forwarded by you, Mr. Sessions, to the Justice Department, with a memorandum describing only the conclusion and the recommendation of the second attorney; and that in a number of instances, the Justice Department responded by asking for an additional investigation and alleged that although Justice ultimately accepted the recommendation to decline these cases, it apparently acted without the knowledge of the original recommendation to the contrary, which was made by Mr. Figures.

Should Mr. Figures' recommendation have been forwarded to the Department of Justice, and if so, why wasn't it?

Mr. **Sessions**. Senator Heflin, that matter really, I think, is completely wrong. First of all, let me say that our office, we have an open door. Agents come in and talk to lawyers all the time. And in the 90 cases that I found that have been handled—and I believe that is all of them in 1973, 1974 and 1975—by Mr. Figures, that every case that came in, I assigned to him. Occasionally an agent would come down and talk to another lawyer in the office about a case. And one of the reasons to talk is he thinks he has done enough investigation at that stage, and he is asking for advice. Most of the reports say, instead of declining, they say, "The assistant U.S. attorney recommends no further investigation at this time," because the report has not come in at that time; the attorney is just talking to the agent.

Then, if the assistant says no further investigation, the agent puts the evidence together in a report; a copy comes to my office, and a copy goes to the Department of Justice, Civil Rights Division, in Washington, who has the final say-so on it.

When that report would come across my desk, I assigned them all to Mr. Figures, except one which involved a nut that I knew, an assistant in the office already knew about. So I just assigned that one to him, and it was not a serious case at all.

The problem we had on those cases is that—Mr. Figures may have read something into it as sinister, but he would be highly mistaken in that. When that report would come in, I would send it to him even though another lawyer in the office had issued a preliminary opinion. And when he questioned me about it, I said, "I want you to evaluate it and give your opinion. You can ask for an additional investigation. You can talk to the Department of Justice."

I do not believe that Mr. Figures would say I ordered any case that he handled to be dismissed or not proceeded with. I have never rejected a request that he return an indictment in a case. I may have said, "I do not know that you need any more investigation in a matter," but I do not believe I really did that.

I told him one time, "Sure, the FBI gets tired, and they do not want you sometimes to call up ask for more and say, 'Look, I have done all this investigation, and now you want me to interview five or six more witnesses.' " I told him, "You make them work. You have them do whatever you want to do."

Senator HEFLIN. I understand, too, that we have heard something about one criminal civil rights case which was successfully prosecuted involving the lynching of a young black man named Michael Donald by a group of Ku Klux Klan members.

This case was handled by Mr. Figures. Mr. Figures, as I understand it, has indicated that Mr. Sessions repeatedly urged Mr. Figures to drop the case, and that you only supported the investigation when Mr. Figures refused to agree to discontinue it. Is this true, or not true?

Mr. SESSIONS. No, sir; that is not true. That case was in the office, and the murder had taken place maybe 5 months before I became U.S. attorney. The State district attorney had indicted the wrong people in the case and had to dismiss his case, and our case at some point came to a point where nobody really knew what to do.

Mr. Figures definitely did not want to see the investigation end. He asked the FBI to go out and reinterview witnesses, and I concurred in that, or I was aware of it, and they were reinterviewed. That came back, and—I remember distinctly saying, "We know who did this murder, and we do not have proof now, but we need to go do something about it."

Mr. Kowalski and Mr. Glenn came down from the Civil Rights Division, and we had a conference and discussed all the alternatives. And I am the one that said, as I recall, "The only other alternative now is to have a grand jury investigation"—subpoena everybody that knows anything about the case, klansmen who were at meetings where it may have been discussed, and go foward with it. I told them, you can have the special grand jury for that purpose, and we will set up any time that can possibly be arranged.

And that is when Mr. Kowalski and Mr. Glenn and Mr. Figures conducted a brilliant investigation. They took a case that I do not think any of us thought we could bring—with any real confidence, to fruition, and turned it into a conviction.

I will say Mr. Figures indicated to me that Mr. Farve, who was an interim U.S. attorney before I became U.S. attorney, had indicated that he thought the case was at a dead standstill and had to be closed out, or something be done about it.

I never told him to close it out.

Senator HEFLIN. There have been some charges that in Conecuh County, the Civil Rights Division of the Department of Justice directed the Mobile office to investigate a complaint that black voters had been harassed in Conecuh County and used internal Justice Department procedures which do not require the concurrence or the consultation with the local U.S. attorney. The FBI acts as an investigative arm of the Civil Rights Division. And it is alleged that when you learned about the proposed investigation, you countermanded the Civil Rights Division's order without notifying that division of your action. It is further alleged that when the Civil Rights Division subsequently realized that no investigation had been conducted and learned of your action, your alleged action being that you had countermanded the investigation, you resisted an initial request that you cease interfering with that investigation until you were advised by a high-ranking Justice Department official that the U.S. attorney could not legally countermand Department orders at that time. Do you care to comment on any aspect of those allegations?

Mr. SESSIONS. Yes, sir. I have given my answer to that previously. The best that I could tell when Mr. Biden read the transcript of the civil rights attorney who said that, it was focused on a matter involving a forged letter on Department of Justice stationery, authorizing a preclearance——

Senator HEFLIN. Well, if you have answered it, I do not want you to repeat. I just missed that. I may have been out of the hearing room when that was asked. I just want to cover all of the issues that have been raised.

Mr. SESSIONS. I would be glad to look into that further, but I am really convinced that when we find what happened—I believe that the Civil Rights Division believed that, but I think that was incorrect, and I think the record will show that. I think they were in good faith in believing that.

Senator HEFLIN. I will turn it back over to you, Senator Biden, since I do not want to duplicate some of the things that you may have already covered.

Senator BIDEN. No. Go ahead. That is the only thing you have covered so far. Keep going.

Senator HEFLIN. There is a Dallas County issue——

Mr. SESSIONS. Judge Heflin, on that question, I think there is a distinction. It is possible that I would have said, "Don't proceed on this case"—I mean, not proceed—that I indicated it did not require further investigation or something, although I am told the report does not indicate I had anything to do with the Conecuh County case. But I do not believe that I would have stopped an investigation. I had only been in a couple of months, and I may not have known what the policies were. Eventually, the case never developed.

Senator HEFLIN. Well, there is another allegation that the Civil Rights Division filed a civil complaint, that normally the name of the local U.S. attorney appears on the complaint, that the U.S. attorney signs the pleadings along with the attorneys in Washington. The U.S. attorney's role is generally pro forma; and the case is ordinarily initiated, controlled, and litigated by the Division of Civil Rights of the Department of Justice's attorneys. The Division attorneys were sent to Mr. Sessions for routine signature of a complaint to be filed in a case challenging an at-large election scheme as racially discriminatory. It is alleged that Mr. Sessions refused to sign the complaint.

Do you wish to comment on that allegation?

Mr. SESSIONS. Does it cite which county?

Senator HEFLIN. Dallas County.

Mr. SESSIONS. Mr. Hebert and I talked about that. He told me it was his recollection that that case was filed before I became U.S. attorney. Perhaps someone could have seen Mr. Farve's name on it, and after I became U.S. attorney, he was an assistant. But that was what Hebert told me. I do not recall ever refusing to sign any complaint, although as I say, it is scarey sometimes when you sign a complaint, and you are suing everybody in a county government, and you do need to inquire of the lawyer who is asking you to sign it, the basis for the lawsuit.

Senator HEFLIN. On the Perry County issue, one of the allegations against you is that was brought to your attention to voter fraud on the part of whites—and that there was a selected prosecution only against blacks, and that there was no investigation or prosecution of the whites.

Would you care to comment on that?

Mr. SESSIONS. Yes, sir; I would challenge that statement. No evidence was presented to us at that time of fraud by whites, at least, anything credible, and I would further state that at the House hearing, I believe Mr. Hank Sanders, who was a law partner in the firm that defended the case, stated in his testimony that we had never asked for investigations in the black belt. Our office certainly was never given any formal request for such an investigation. And I called the FBI when that statement was made in the paper, and they assured me that they had no indices that show complaints against whites and I do not believe that happened.

Now, during the trial, there was continual drumbeat, and it was very effective in the media, to suggest that this was true, and affidavits were filed under seal that purportedly indicated that fraud had been taking place by other people, I am not sure if they were whites, in Perry County.

And we filed and tried to get the matters from under seal, and those documents have not been produced.

Mr. Chestnut, subsequent to the trial, has stated he has that information. I personally requested the supervisor of the FBI to talk to him about that, and he said he would send the material, but I am told that it has not been received.

If it were so, I think it would be matters that involved technicalities rather than actual fraud, which is the primary focus of this case, the actual changing of a ballot without permission.

Senator BIDEN. Will the Senator yield for a moment?

Senator HEFLIN. Yes. Go ahead.

Senator BIDEN. Mr. Sessions, you have been here a long time. I know I have more questions, and so does my colleague from Alabama. But would you like a cup of coffee or would you like something to drink, or would you like to take a break?

Mr. SESSIONS. A Coke or coffee might pick me up a little bit. I am getting tired.

Senator BIDEN. Or would you like to take a short break?

Mr. SESSIONS. A break would be great.

Senator BIDEN. All right. Let us break for the next 7 minutes or so, until 8.

[Short recess.]

Senator BIDEN. Let us bring the hearing back to order. The hearing will come to order.

We have had a little session there, and Mr. Sessions has been sitting at that table now for almost 6 straight hours. I for one have covered the bulk of the areas that I wish to cover. The Senator from Alabama, similarly so, although to use the Senator from Alabama's phrase, we are just sort of laying a predicate here for the basis upon which to have knowledge of whether we believe or disbelieve the witnesses who will be coming up on Wednesday and their assertions.

I believe we should end for the day and make a judgment after the witnesses whom we had hoped would testify today, when they testify Wednesday, make a judgment after those hearings, in consultation with the chairman of the committee and the majority of the committee as to whether or not we would ask Mr. Sessions to come back again at all before we vote on his nomination.

Do you have anything to add to that, Senator Heflin?

Senator HEFLIN. The only question in my mind now is that since Mr. Hebert testified and came, I believe that the other witnesses who have given depositions should appear in person. I do not know whether that could be arranged. That is Mr. Hancock, Mr. Bell, and Mr. Glenn, and any others who have given depositions. It may be that the evidence is sufficient; I do not know, but——

Senator BIDEN. I do not disagree with that. I think that is a matter——

Senator HEFLIN. Because it may be that you have the issue of the Department of Justice, and there might be questions of subpoenas of the executive branch—however, I do not want to get into——

Senator BIDEN. Who subpoenas whom.

Senator HEFLIN. But if it can be worked out, Duke, since Mr. Hebert came on his own, it may well be that some of the others would want to come up.

Mr. SHORT. Yes, sir; we can check it.

Senator BIDEN. I think that is a matter we can check, and why don't we—this was not designed, Mr. Sessions, to avoid buying you a Coke. I want to make that clear.

Mr. SESSIONS. Somebody did.

Senator **Biden**. You got your Coke, anyway; you have got two Cokes, now. You have one from the minority and one from the majority.

Mr. **Sessions**. Would you like one? You should be tired, too.

Senator **Biden**. No. I guess I should not kid at this point. As you have observed, kidding can get you in trouble.

Let me suggest then that we adjourn for the evening. We will recommence this hearing on Wednesday the 19th, and subsequent to that, we will make a judgment as to whether or not we ask you to come back.

I thank you—is there anything you would like to say before we close? You have sat here this long.

Mr. **Sessions**. I would like to see the transcripts of the Department of Justice statements that have been quoted.

Senator **Biden**. We will make available to you anything and everything that we have, and if there is anything that we have overlooked—I beg your pardon, Senator Denton. I did not know you were here.

Senator **Heflin**. There might be some witnesses who could give relatively short statements. I see Dr. Gilliard, who is a dentist and a member of the board of education in Mobile County, here. I do not know what his testimony may be. And Elaine Jones has indicated that Dr. Gilliard has some problems about returning. I do not mind, if there are some relatively short statements that could be disposed of——

Senator **Biden**. Well, let me suggest—and I would like very much to accommodate the witnesses who have waited so long, particularly those who have difficulty coming back. But to be fair about it—and I know that the Senator from Alabama wishes to be and is not attempting not to be—but I made the representation to my colleagues on both sides that there would not be any witnesses. What I would not like to see happen is a witness testify, for or against—and I assume, although I am being presumptuous, but I assume it is against the nomination that this witness would be testifying—and not have those on the other side of the issue have a chance to cross-examine that witness. And to that extent, that is the reason why I would reluctantly—and it is not my prerogative to do it—but I for one think it would be better not to do it. We will try to figure out a way to maybe help get you back. I understand that the suggestion made by Senator Heflin was a courtesy that I am sure the other Senator from Alabama would like to accommodate, too. But I think we will both get into, as they say on the east side of Wilmington, DE, "We will be in a world of hurt," if we let that happen without people having a chance to cross-examine.

So I think we should just end it here.

Senator **Denton** [presiding]. Well, I believe that my senior colleague from Alabama deserves the information that we previously announced, Senator Heflin, an agreement between the——

Senator **Heflin**. I did not know about that.

Senator **Denton** [continuing]. I know you did not, sir; that is why I mention this—that we let witnesses go back home, subject to the announcement previously made, agreed to by our side, on the suggestion of the minority side, that we reconvene on Wednesday at 10 a.m.

But that was not my decision; it was a previously announced decision.

Senator **Biden**. It is really my making, I admit. What I just do not want to do is get into a situation where any of my colleagues are able to say, "Hey, Joe, you brought up a hostile witness, and I did not get a chance to cross-examine that witness."

I think fair is fair, and we should just let it move on to Wednesday.

Senator **Denton**. I think my colleagues would agree that this has been a long hearing. Six hours is unprecedented in my time here. I appreciate the objectivity which has been shown, and I think we all feel that Mr. Sessions has shown considerable endurance, perseverance, and patience in this, and I want to express the regret of the entire committee to those witnesses who did come today. There was no plot to deny anyone the opportunity to testify. It is inconvenient to you, and we apologize for that.

So Mr. Sessions, you are prepared to come back—you are finished. OK. You are finished, subject to future discussion and decision, which the chairman of the committee will announce. And the other witnesses will be back at 10 a.m. on Wednesday, in accordance with the previous agreement.

This hearing stands adjourned.

[Whereupon, at 8:08 p.m., the committee was adjourned, to reconvene Wednesday, March 19, 1986, at 10 a.m.]

NOMINATION OF JEFFERSON B. SESSIONS III, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

WEDNESDAY, MARCH 19, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:15 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Jeremiah Denton (acting chairman) presiding.

Also present: Senators Specter, East, Biden, Kennedy, Heflin, and Simon.

Staff present: Duke Short, chief investigator; Frank Klonoski, investigator; Joel Lisker, counsel; and Cindy LeBow, minority chief counsel.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. The hearing will come to order.

We recognize the presence of our distinguished colleague from Alabama, our senior colleague, Senator Heflin. We are hoping that other Senators will appear shortly.

I have an opening statement. If not many Senators show, we are left with what they are going to read in the press or see on television as their sources of information. The transcript they will not read. It will probably not even be ready by the time we have the vote and, with reliance upon the basic honesty of journalism, I submit that this is the first opportunity to present witnesses who were in Perry County, the first opportunity to present a recantation of evidence submitted against Mr. Sessions by two U.S. Department of Justice attorneys, one, Mr. Hebert, one, Mr. Hancock, by deposition.

I believe these recantations are significant. I believe the witnesses from Alabama today, black and white, Democrat and Republican, for and against Mr. Sessions are the key to justice in Mr. Sessions' case.

Some of the sworn testimony we heard on March 13 in this very room from a Justice Department witness was false and he has since issued his recantation.

Second, a deposition which was placed in the record has also been recanted and we will hear from that witness in person, Mr. Paul Hancock, this morning.

The point is that the dialog and deeds attributed to Mr. Jeff Sessions were attested to here in person in sworn testimony by Mr.

Hebert and a sworn deposition by another attorney who will be here today, and it turns out that that to which they attested was not correct. Certainly, what is remaining after these two recantations, namely memories of one of the two about what Mr. Sessions said in off the cuff and private conversations, would fall into doubt and there will be testimony today which will show you just how much doubt should exist with respect to that kind of conversation that was recounted.

We heard the testimony of J. Gerald Hebert, a senior trial attorney of the Department of Justice, Civil Rights Division, here on March 13, 1986. Mr. Hebert had been interviewed on March 12 by investigators of the full committee, and the particular question in point, is a question raised by the minority investigator, Mr. Govan, "Do you know whether he's"—and that is Sessions—"do you know whether he has failed to cooperate or has interfered in cases of other assistants in the Justice Department?" Mr. Hebert replied, "Well, I only know what happened with our *Conecuh County* case, but Paul Hancock is in a better position to talk about that than I am." Mr. Hebert went on to say during this interview that Paul—that is Hancock—"Paul and I had talked about it and he and I both have a very fuzzy recollection about Conecuh County. It was Paul's case primarily."

Now, what we are referring to is their allegation that Mr. Sessions interfered with the *Conecuh County* case, which was part of the record and part of that which has indicted, in some newspapers and in some minds, Mr. Sessions.

Paul Hancock told Mr. Govan, the minority investigator, on March 12, also under oath, "I mean I'm fairly confident that the investigation was not conducted at Mr. Sessions' request. I can't say with as much confidence that the FBI told me that or maybe Jeff Sessions told me that."

He went on to say that, "He may have spoken to Mr. Sessions about it at some point in the process." He goes on, "In fact, I recall that I spoke to Mr. Sessions about it and he confirmed that he thought that it was an investigation we should not conduct and told the Bureau not to conduct it."

He went on to reconstruct a whole dialog with Mr. Sessions. Mr. Hancock went on to reconstruct a whole dialog with Mr. Sessions on what was characterized as Mr. Sessions' blocking of the Conecuh County civil rights investigation.

Ladies and gentlemen, after these depositions were given and used by some of my Democratic colleagues against Mr. Sessions in a very damaging manner, Mr. Hebert testified that Mr. Sessions had interfered with the Conecuh County investigation. He too constructed a conversation with Mr. Sessions on that subject.

The facts are that these conversations never took place at all with Mr. Sessions. On March 17, 1986, Mr. Hancock and Mr. Hebert recanted those portions of their depositions on the alleged interference of the Conecuh County investigation by Mr. Sessions and in fact checked Department of Justice records which unfortunately they did not refer to prior to their depositions. They both say now that the case did not involve Conecuh County but Clarke County, and Jeff Sessions did not attempt to block the FBI investigation but in fact it was his predecessor in office, a Carter administration appointee. So they had the wrong county and they had the wrong man. None of that was permitted to emerge during the last hearing. They did not even refer, when they made their allegations against him, to their own records.

Further, Senator Heflin and ladies and gentlemen, a lot of what we heard Jeff Sessions accused of saying last Thursday, Mr. Sessions denied at the time or said he could not recall saying. Every friend of his that I have known, even his enemies say that he is remarkably honest, he will not say that he did not say something unless he is sure he did not say something. And the people who have been accusing him of saying things or saying things he does not remember or things that he absolutely denies having said in the context in which they have reported that he has said them.

But the newspapers by and large on the first burst after the last hearing did not treat Mr. Sessions fairly and simply went on to report the statements that he was accused of having made as if they were fact. But on the second burst, at least in the Washington Post, the editorial and the second article written by the gentleman, who I think was extremely inaccurate in his first reporting, Mr. Howard Kurtz, who might be here today, wrote articles which I thought were much more fair, but by that time Mr. Sessions had fallen in the minds of his colleagues and in the minds of those who do not know anything about him. He has not fallen in the minds of those who know him in the southern district of Alabama, however. In the deluge of telegrams from Republicans and Democrats, blacks and whites, from there and from Perry County, it has been overwhelming.

So please let us try to be fair in dealing with Mr. Sessions. I have chatted with Senator Kennedy. I do not think he would mind if I mention this. He has said that he has made clear that he did not any more have reservations about Mr. Sessions' having called the case to prosecution in Perry County. He said no, he had to do that. But he said, I am still very concerned about the remarks that he made, attributed to him by the civil rights attorneys from the Justice Department.

We have already dealt with one of those long stories. Let us deal with the others. On the NAACP/ACLU being un-American, and which he has been quoted in the papers as having said flatly, I heard him repeatedly say that he did not say it in that context, he said that if a man in the civil rights activist field, when some of them get involved in international affairs, that some people might perceive that what they are doing is counterproductive to them and some of the things they are saying might be un-American.

Now, if you want to take a poll in the United States and find out how many people believe that about certain individuals, it might be that Mr. Sessions is not so wild in that, but he never said he thought that the NAACP or the ACLU were flatly un-American or Communist inspired, yet he has been convicted of it in the media of our land.

As we all know, the human memory is frail and, as we have already seen with the Conecuh County incident, can be severely flawed, when conversations which never took place are reported by two men, they are wrong on the counties and they are wrong on the man.

What Mr. Sessions said is that when such groups go outside the area of civil rights issues—I say this again—for racial reform activities and involve themselves in a foreign affairs controversy, there might be a perception by some that the positions they advocate are un-American. He said that. That is a flat fact. He never said that he considered the NAACP un-American. Indeed, in this room to my ears he said they were largely responsible for the civil rights gains made in the South, and he and this Senator—I have said from so many podiums that the biggest thing about the South is that it is now able to draw upon its full most precious human resources, its human resources, namely the black people who were put down, delegated to the backs of buses, unable to get equal education opportunity or job opportunity. That has improved to the point where the South is now producing goods and services with the best work ethic reported by two national surveys. The State of Alabama has the most black mayors of any State in the Union, with the second most, considering its poor population, the second most gross number, that is whole number, of black elected officials. Per capita, Alabama is about 10 times ahead of any other State.

So things have happened down there and I hope that they continue to happen and are not inverted and reverted by what happens as a result of these hearings. I have not heard any of my Democratic colleagues, including Senator Kennedy, say anything that I did not think were coming from sincerity on their part. After all, they looked at allegations sworn to in affidavits by this Justice Department official and others. They assumed those things were true. We are learning they were not true, and when they learn they are not true, if they show up at this hearing, I hope they will change their minds.

On the issue of Jeff Sessions responding to Mr. Hebert's assertion that a judge called Jim Blacksher, a white civil rights attorney, "A traitor or disgrace to his race," it may well be that if the purpose of the conversation was to establish whether the judge had actually made this statement, that Sessions was simply responding to the question of whether it was said. Jeff's response could just as easily have been, "Well, maybe he did." In other words, maybe the judge did say that, because in the final analysis this is what Hebert was trying to ascertain, did the judge say that Jim Blacksher is a traitor or disgrace to his race. So I believe that at best some of the statements attributed to Mr. Sessions have been highly distorted and rendered significant beyond any possible just degree.

Before the hearing proceeds much further, we had better understand what the issue is, because it too has been distorted. The issue is, Is Mr. Sessions competent to serve as a judge in the U.S. district court, does he possess the academic and intellectual qualities that would permit him to serve, does he have judicial temperament, is he a man of integrity who will decide cases solely on the base of evidence and the law?

I believe he is, the President believes he is, still believes he is, and I have heard nothing during the course of this hearing to dissuade me from this view, and I hope that you will hear the things today which should remove doubts about him.

The American Bar Association conducted an extensive investigation and examined most, if not all of the same allegations raised at the hearing on March 13. They found these allegations to be without merit because in the final analysis the ABA rated him qualified.

I have here a statement of endorsement of the Sessions nomination from the Mobile Bar Association, which includes both black and white lawyers, it is dated March 17, 1986. It states:

> The Bar Association's firm belief that Mr. Sessions is eminently qualified for the position of U.S. District Judge, that he has been fair with all persons, regardless of race or national origin, and that any suggestions that Mr. Sessions is racially prejudiced is both unfounded and unfair.

I would like, without objection, to place this statement by the Mobile Bar Association executive committee in the record.

[The statement referred to follows:]

Statement Adopted by Mobile Bar Association Executive Committee on March 17, 1986

The Executive Committee of the Mobile Bar Association, Mobile, Alabama, hereby re-affirms its endorsement of U.S. Attorney Jefferson B. Sessions, III, for the position of U.S. District Judge for the Southern District of Alabama, and states its firm belief that Mr. Sessions is eminently qualified for the position of U.S. District Judge, that he has been fair with all persons regardless of race or national origin, and that any suggestion Mr. Sessions is racially prejudiced is both unfounded and unfair.

Senator **Denton**. I recognize Senator Heflin for an opening statement.

STATEMENT OF SENATOR HOWELL HEFLIN

Senator **Heflin**. I have no opening statement other than I would state that, while other Senators are absent, they do have staff individuals here and I am sure that they will not rely merely on media accounts as to the decisions that they would make. They have staff people and I have staff people who will be here throughout the entire hearing and they will be taking notes and things of this sort. I am sure that many of them would come; unfortunately we in the Senate have been best described as a 100-ring circus, we are due to be at a hundred different places all at the same time and there are a hundred different things going on. Of course, that is an exaggeration, but there are at least a hundred different things going on and we cannot cover all of them and we have to depend on staff. Each of us has a large staff and they have fields that they are able to become expert in and they inform us when we are absent what goes on.

Senator **Denton**. Thank you, Senator Heflin. That is very true, if I may support what the Senator said. Their absence does not necessarily mean that they do not care. I am missing a number of subcommittee hearings which my opponents can use in the election of saying I was absent. I have no choice. I chaired from 2 until 9 the other day, except for chairing in the Senate, presiding. I missed a number of subcommittee meetings then and I am missing several today. I expect that we will adjourn today at 4 o'clock, because this room has to be used for something else, so we will be here until 4 or 4:30 so that room could be prepared for its use for another activity.

I will now call panel one, which consists of Paul F. Hancock, Assistant for Litigation, Voting Section, Civil Rights Division, Department of Justice, Washington, DC; John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice; Barry Kowalski, Deputy Chief, Criminal Section, Civil Rights Division, Department of Justice; Albert Glenn, Criminal Section, Civil Rights Division, Department of Justice; and Daniel Bell, Deputy Chief, Criminal Section, Civil Rights Division, Department of Justice.

If you will all stand, gentlemen, I will swear you in.

Do you solemnly swear that the testimony you shall give before this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Hancock**. I do.

Mr. **Keeney**. I do.

Mr. **Kowalski**. I do.

Mr. **Glenn**. I do.

Mr. **Bell**. I do.

TESTIMONY OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION; PAUL F. HANCOCK, ASSISTANT FOR LITIGATION, VOTING SECTION, CIVIL RIGHTS DIVISION; BARRY KOWALSKI, DEPUTY CHIEF, CRIMINAL SECTION, CIVIL RIGHTS DIVISION; ALBERT GLENN, ATTORNEY, CRIMINAL SECTION, CIVIL RIGHTS DIVISION; AND DANIEL BELL, DEPUTY CHIEF, CRIMINAL SECTION, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Senator **Denton**. I will recognize Deputy Assistant Attorney General John C. Keeney and I would suggest that he make any statement he cares to and then introduce his colleagues in such order as he chooses to make their statements.

Mr. **Keeney**. Mr. Chairman, my colleagues and I are here on different missions. My mission is to discuss the *Perry County* cases, the *Turners* and *Hogue* case.

Senator **Denton**. Would you please put the microphone a little closer to your mouth or directly in front?

Mr. **Keeney**. Is that better, Mr. Chairman?

Senator **Denton**. Yes, sir.

Mr. **Keeney**. As I said, my mission is to discuss the *Perry County* cases, and I would like to briefly describe the history of those cases.

First of all, we have to go back. The cases arose out of the 1984 election, primary election, but there is a history that goes back before that. In 1982, there was information developed by the local prosecutor with a local grand jury showing a discrepancy in handwriting on registration forms and absentee applications, and the ballots themselves reflected a number of strikeovers.

Now, one of the difficulties that the local prosecutor and the local grand jury had with the investigation is that they could not identify the strikeover ballots with the individual voter, so they were not able to go back to a—take a particular ballot back to a voter and ask him or her whether or not that was his or her ballot. That is important because this situation changed in 1984.

Because of their inability to further develop the cases, the local prosecutor and the grand jury itself in Perry County asked the Federal Government to take over. They discussed it with Mr. Sessions. Mr. Sessions discussed it with Craig Donsanto of our Public Integrity Section, who is our specialist on election fraud, and they concluded that—I guess primarily Mr. Donsanto took the lead in this—that the likelihood of developing cases on this record is not sufficiently high to warrant the use of the resources at that time, primarily the use of the resources of the FBI, which were then being utilized in two other counties in Alabama on election fraud cases. They were also being utilized very heavily in Chicago and Duval County in Texas, among others.

Now, the pattern that was reflected in that grand jury was a pickup of absentee ballots by a deputy sheriff in his pickup truck and the solicitation of absentee ballots by members of the Perry County Civic League. That is the story insofar as 1982, and it is important as a background to 1984.

The primary in 1984 was scheduled for September 4. On September 3, Mr. Sessions was advised that the same people were conducting the same activities, the solicitation of ballots seen in the pickup truck of the deputy sheriff. The observations were made by two citizens primarily, a man by the name of Billingslea and a Colonel Kinard who was a tax assessor in the local area, and they observed open envelopes, open election ballot envelopes on the truck of the deputy sheriff and they also advised that they had observed a coming together of the activists at the party headquarters, particularly the Turners and Mr. Hogue.

An additional factor was present here that was not present previously. Some of the local citizenry went to the circuit court and they asked for an order that would direct the election officials to pair up the ballots that were cast with the envelope, the second envelope in which those ballots were placed which has the name of the voter on, so that if there were strikeovers or anything on the ballot, that the individuals—that the investigators could go back to the individual voters and ask them whether or not the ballot as it presently existed was the ballot as it was executed by them.

Senator Denton. Excuse me, sir. If this is something new, would you mind starting that part of it again, something we have not heard?

Mr. Keeney. Well, I think it is a well-known fact of the area, but what happened was that the citizens in—I believe they were the two individuals I referred to, Mr. Kinard and Mr. Billingslea, went to the circuit court and asked for a court order which would order the election officials in Perry County to authorize the so-called pairing of ballots, absentee ballots.

What that meant simply was there is an original outside envelope, there is an interior envelope with the name of the voter and then there is also a ballot inside the interior envelope. What they got an order for was a direction to the county officials to mark the same number on or mark in a similar fashion numbers I believe, the same number on the ballot with the voter's name, as is on the—the envelope with the voter's name as is on the ballot, so it enabled investigators to go back and take the individual ballots, they knew who cast which ballot, and they were then able to go back to those people and ask whether or not the ballot as filed was the ballot that they had executed.

So there was a pairing up of the ballots by the grand jury after this, and there was one other step, Mr. Chairman. There was a mail cover put on. All of this happened very quickly, rapidly on September 3, the day before the election. The FBI, an FBI agent was observing the party headquarters and noted that the Turners and the Hogues brought in, Turners and Hogue brought in what appeared to be bundles of ballots.

He continued the observation until he saw Mr. Hogue and Mr. Turner deposit those ballots, those bundles of ballots in a mail depository. Prior to that time, a mail cover was obtained which enabled a mail official inside the depository to observe and then advise which ballots had been deposited by Mr. Hogue and which ballots had been deposited by Mr. Turner, and he put a "T" and an "H" on the ballots reflecting which of the individuals had deposited the mail.

That, of course, Mr. Chairman, is important because it brings into play the mail fraud statute. If there are fraudulent ballots, we were able to demonstrate the mails were used in connection with them.

I might just put in perspective, because in the past I have testified on this subject before the Edwards committee in the House, and a question was raised as to why the Government did not hold off on its investigation until after the elections were over.

As I mentioned earlier, we are dealing with a primary election here on September 4. There was a runoff election on the 25th and, as you and Senator Heflin in particular can attest, the critical election insofar as local people are concerned, the local candidates, is the runoff election in the primary. So the investigation, the FBI going on the street, as it were, was held off until after the runoff election was held.

Now, what did the ballots show? They showed that 75 altered ballots out of 709 cast. Of those—we do not usually look at these things from the standpoint of race; as a matter of fact, in the House we were asked for statistics nationwide based upon race and we had to tell Chairman Edwards we do not keep statistics that way, but we did go back and reconstruct nationally and we did some reconstruction here at the request of the committee and I have the figures here.

There were five ballots cast by white persons and when they were interviewed they said it was a mistake, they had made a mistake and the alteration was theirs. There were 70 ballots cast by blacks, some of which had the "T" for Turner or the "H" for Hogue markings on, and 29 of those ballots were changed. The ballots which had——

Senator DENTON. Do you mean changed illegally?

Mr. KEENEY. Changed illegally, yes. Well, they were changed and then we followed through, Mr. Chairman, and took the ballots back to the individual voters and, based upon the interviews with the voters, we concluded that they were changed, yes.

Now, of those 29 involved with an "H" or a "T" on them, those with the "H" an eraser had been used, and those with a "T" a black pen had been used for strikeovers. We had one situation where the person who purportedly had voted never executed the ballot.

Based on that information, the grand jury, which ran from October, November, and December 1984, returned an indictment on the 25th of January 1985, charging conspiracy to violate the mail fraud and the multiple-voting statutes, also charging substantive mail charges and charging substantive violations by Mr. Hogue and Mr. Turner of the multiple-voting statutes.

Mr. Chairman, at every stage of this process the Department of Justice, Criminal Division, Public Integrity Section was involved. We approved the investigation, as we are required to do. We approved the indictment. As a matter of fact, one of our people was down there and worked on the indictment and presentation.

Mr. Chairman, it was handled in all respects in a very regular fashion, following through on the general enforcement program in the election fraud area of the Department of Justice.

Thank you.

Senator DENTON. Thank you, Mr. Keeney. Just so we understand what the Perry County election was all about, was this a Democratic versus Republican election or a Democratic versus Democratic primary?

Mr. KEENEY. It was a Democratic primary.

Senator DENTON. A Democratic primary, with no Republican involved. Was the case apparently whites seeking to perpetrate a fraud against blacks in an election which in newspapers has been alleged prior to this, or was this principally black people saying that their votes had been changed and that they were changed principally by black people?

Mr. KEENEY. The complainants were black people who were active politically. The victims were black people and, of course, the defendants were black.

Senator DENTON. So the victims were Democratic voters and they were black in race?

Mr. KEENEY. Yes, sir.

Senator DENTON. I guess Senator Heflin came first. Senator DeConcini, do you defer?

Senator DECONCINI. I have no questions.

Senator DENTON. Well, I would like to welcome my distinguished colleague from Arizona and he defers to Senator Heflin, my senior colleague from Alabama.

Senator HEFLIN. Mr. Keeney, there was the Perry County prosecution in the southern district of Alabama and there were some prosecutions in the northern district of Alabama. Do you remember what counties were involved in that?

Mr. KEENEY. I do not, Senator.

Senator HEFLIN. Greene County or——

Mr. KEENEY. It was Mr. Bell who prosecuted that.

Senator HEFLIN. He did not——

Mr. KEENEY. I know them by prosecutor rather than by county, Mr. Chairman.

Senator HEFLIN. Well, they had this one in which there was a conviction and then there was another one, maybe it was Greene County. I am trying to remember whether there was any other than just Greene County or Greene and Perry County. Since you do not know the counties, I will have to elicit that information from somebody else.

Was this investigation entirely directed toward the absentee box?

Mr. KEENEY. Absolutely, yes, sir.

Senator HEFLIN. Why was it directed only to the absentees?

Mr. KEENEY. Because my understanding was those were the primary allegations. You see, these were allegations before the actual election, Senator Heflin, and we followed through on them. Whether or not there was any fraud on the election balloting, I really do not know, but I do not know of any significant investigation that we conducted with respect to it.

Senator HEFLIN. Well, there have been charges, whether they are true or not at this stage it is not for me to say, that the Department of Justice was directing in Alabama a vote fraud investigation in a certain section of the State which is predominantly black, and instead of investigating irregularities that might have taken place in the past or either establish some pattern that would take place in this election, it was centered in what is known as the black belt of Alabama as opposed to some other section.

Now, there have been allegations of vote fraud in other sections of the State, one in DeKalb County, in the 1984 election—and which is a predominantly white, and has a very small percentage of blacks, and there have been reports that the local Republicans there wanted an investigation as to the absentee box and absentee voting, but that the Department of Justice declined to go into it.

Now, that does not pertain to Sessions because he is not in that district and he is in the southern district, but this would be toward the Department of Justice, that there have been selective prosecutions and selective counties where you have conducted your vote fraud which have been predominantly black areas.

Mr. KEENEY. Senator——

Senator HEFLIN. As I say, these charges have been made and I will give you an opportunity to respond to them.

Mr. KEENEY. I accept the word "selective" if you will accept my explanation of what we view as selective. We prosecute—we are a reactive organization—we prosecute on the basis of complaints and we prosecute to the extent that we have available resources.

As I indicated, one of the reasons that we did not get into this investigation in 1982 was that the FBI investigative resources were spread very thin throughout the country and additional investigators would have to be brought in in order to fully develop the investigation.

The other reason, of course, is when—which you, as a Chief Justice of Alabama can appreciate—the evidentiary problems were more severe in 1982 than they turned out to be in 1984.

We have a nationwide program, Senator Heflin, and we respond to the complaints wherever they may be and we try to use our resources most effectively to have successful prosecutions that will have a deterrent effect.

Senator HEFLIN. Well, as I said, you asked me if I would accept the word "selective." I just quoted a charge that was made, and it is rather hearsay to me, so I do not know, that is not my word, but I am saying that that is one of the charges that has been made about the Department of Justice that there are other counties and there have been some evaluation of absenteee boxes which would show a very high percentage in certain areas of absentee voting as compared to the total vote.

Alabama is low on absentee voting, it is rather restrictive, and I just—that charge has been made and I wanted to give you an opportunity, since you are the deputy in charge of this, to respond. But your position is that other than in the southern district, the other matters are being handled by someone else?

Mr. **KEENEY**. The other matters are being handled by someone other than Mr. Sessions. All I was saying, Senator Heflin, was with respect to DeKalb County I am not up on DeKalb County to intelligently discuss it today with you. I would be very glad to get back to you on the subject. I was just trying to explain the general policy.

For instance, in 1982, one of the reasons that we did not proceed, one of the reasons that we decided not to proceed with Perry County was the fact that we were active in, among other things, two other counties in Alabama.

Senator **HEFLIN**. Well, we are not trying DeKalb County, but that charge has been made against the Department of Justice more than it has against Mr. Sessions and I was curious about it.

Senator **DENTON**. Would my colleague yield? I have some information I think that might be useful. It was given the other day before you arrived. The best we can obtain on the voting fraud investigations in Alabama during the term of the present administration is as follows: A 1981 case in Randolph County involved the indictment of 11 people, 1 of whom was black. Three people, all white, were convicted, including the incumbent sheriff.

In Bullock County, in 1983, a black city councilman was indicted and pled guilty to a voting rights violation. In Marshall County, in 1984, one person, white, was indicted and convicted of charges similar to the *Perry County* case.

To keep it complete, in DeKalb County, which is principally white, the Republican Party has asked for a voting fraud investigation and thus far there has been none.

Senator **HEFLIN**. Well, what you are stating, Senator Denton, involves primarily convictions. I was speaking about investigations that have been made.

Mr. **KEENEY**. Senator Heflin, maybe I could be helpful to you with respect to nationwide policy. As I indicated earlier, I testified before the Edwards committee on this subject and we were asked for statistics on prosecutions, convictions by race, and we told them we did not have them but then we went ahead and got the figures. And in the testimony that I gave before the Edwards committee, I laid out the figures, how many blacks, how many whites, how many Republicans, how many Democrats, how many in the South, how many in the North, and so forth. I would be glad to make that available to you, Senator Heflin.

Senator **HEFLIN**. Well, I happen to have a copy of this and your testimony I believe is that investigations are presently in progress in Pike, Green, Bullock, Lowndes, whereas in Perry local black political figures have brought specific information to our attention that identified subjects of criminal actionable conduct.

Now, in order to properly put it in perspective, what is the procedure when you start one and the relationship of the U.S. attorney and the Department of Justice? You say you receive complaints.

These could have been received by the U.S. attorney or could be received in Washington.

Mr. **Keeney**. Yes, sir.

Senator **Heflin**. What is the procedure that is followed to investigate prior to determining whether or not criminal action should be brought and indictment sought?

Mr. **Keeney**. The U.S. attorneys have the authority to conduct a preliminary inquiry which largely consists of interviews of the complainants. Then if they want to conduct a full-scale investigation they have to get the approval of the Criminal Division, our Public Integrity Section. Then they go on with the investigation and if they reach a point where they are going to recommend an indictment, the Criminal Division, Public Integrity Section has to pass on the indictment.

We keep a much tighter control over election fraud cases than we do other type cases, Senator Heflin, for obvious reasons.

Senator **Heflin**. In this case, as you reviewed it, in the event that Mr. Sessions had recommended no prosecution, would the Department of Justice nevertheless have sought an indictment?

Mr. **Keeney**. I do not know. Certainly, we would have considered it, whether or not we would, I do not know because we give deference to U.S. attorneys because they are on the scene, they know the witnesses, they know the juries in their district and we give a great deal of deference. So although we might consider it, I could not say that we would necessarily have overruled him and taken over the case, even though the strikeover allegations were significant and in my judgment pretty good evidence.

Senator **Heflin**. Well, he cannot institute action for an indictment without the approval of the Department of Justice?

Mr. **Keeney**. That is right.

Senator **Heflin**. In other words, if he desired on his own to do something, under the procedures that you have outline he could not do it unless the Department of Justice put the stamp of approval on it?

Mr. **Keeney**. That is right, Senator.

Senator **Heflin**. I may have something else and, since you are going to other staff members, I may want to ask him later on.

Senator **Denton**. All right.

Senator DeConcini.

Senator **DeConcini**. I have no questions.

Senator **Denton**. All right. Mr. Keeney, just one final question. In your overview of this *Perry County* case and in your overview of civil rights prosecutions, the entire field in Alabama, are you aware of any improper actions on behalf of Mr. Sessions in this case or any other?

Mr. **Keeney**. May I just correct. I have nothing to do with civil rights prosecutions. My colleagues do. We are broken down in the Department of Justice in that fashion. In answer to your question, there is no question about my dealings with Mr. Sessions. They have been first rate. He is a good lawyer and every dealing I have had with him has been fine. I know nothing derogatory about Mr. Sessions except obviously I read the papers in the last few days.

Senator **Denton**. Mr. Keeney, we have had a request by those opposing the nomination, which I will honor. It seems that Mr. Liebman will have to leave prematurely, considering the pace of this hearing, so if I may I will excuse you and ask the others to remain while we get Professor Liebman's testimony because he has a 12 o'clock plane to catch and there will only be 5 minutes of testimony.

Thank you very much.

Mr. **Keeney**. Thank you very much, Mr. Chairman.

Senator **Denton**. Dr. Liebman, would you come forward?

Would you raise your right hand. Do you solemnly swear that the testimony you will give today before this hearing is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Liebman**. I do, Mr. Chairman.

Senator **Denton**. Please be seated.

TESTIMONY OF JAMES S. LIEBMAN, ASSOCIATE PROFESSOR OF LAW, COLUMBIA UNIVERSITY SCHOOL OF LAW

Senator **Denton**. You are assistant professor of law at Columbia University School of Law?

Mr. **Liebman**. Associate professor.

Senator **Denton**. Associate professor. And I understand you have a statement you wish to make?

Mr. **Liebman**. Yes, sir.

Senator **Denton**. Please proceed.

Mr. **Liebman**. Thank you, Mr. Chairman. First, I would just like to thank you for getting me on early. I have 120 students who are waiting to hear about the hearsay rule for the first time today and I do not want to disappoint them. They will all be appreciative, too, I am sure.

My name is James Liebman, and prior to coming to the law school in January of this year I was a staff attorney for the NAACP Legal Defense Fund for 6 years. In that role, I was counsel to one of the three defendants in the *Perry County* case that has been the subject of some discussion this morning, and that is Spencer Hogue, Jr.

I have prepared a written statement and that statement addresses primarily the selective prosecution issue which has been the subject also of some discussion here and, without going into that or discussing it here, I would simply ask, Mr. Chairman, that a copy of that statement which has previously been submitted to the committee be made a part of the record.

Senator **Denton**. Without objection, it shall be.

Mr. **Liebman**. I would also ask, if I could, that a copy of the statement of my former associate at the Legal Defense Fund, Lani Guinier, with an accompanying affidavit, be made part of the record. She could not be here today.

Senator **Denton**. Without objection, that will be entered in the record.

Mr. **Liebman**. Thank you, Mr. Chairman.

[The statement of Ms. Guinier follows:]

TESTIMONY OF
LANI GUINIER, ESQUIRE
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

My name is Lani Guinier. I am Assistant Counsel, NAACP Legal Defense and Educational Fund (LDF). LDF is one of the organizations within the Leadership Conference on Civil Rights. I litigate almost exclusively in the voting rights area. I had substantial responsibility for litigating two of the most significant statewide reapportionment cases interpreting Section 2 of the Voting Rights Act, as amended in 1982: Major v. Treen, 574 F. Supp. 325 (E.D. La. 1983) (three judge court) (the "Donald Duck" Congressional gerrymander) and Gingles v. Edmisten, 590 F. Supp. 345 (E.D. N.C. 1984), probable jurisdiction noted, April 29, 1985. I was involved with the Leadership Conference in the successful effort to extend and amend the Voting Rights Act in 1982. This legislation reaffirmed the commitment of Congress to full and meaningful political participation by all Americans. I am co-author, with Drew S. Days, III, of a chapter on enforcement of Section 5 of the Voting Rights Act in the book, Minority Vote Dilution (Howard University Press, 1984). From 1977-1981, I was Special Assistant to Mr. Days when he was Assistant Attorney General for Civil Rights, United States Department of Justice. I submit this testimony on behalf of the Leadership Conference on Civil Rights and the Legal Defense Fund in opposition to the nomination of Jefferson B. Sessions, III, to the United States District Court in the Southern District of Alabama.

I was one of the defense counsel representing Spencer Hogue, Jr., in the federal prosecution, United States v. Albert Turner, Spencer Hogue, Jr. and Evelyn Turner, Cr. No. 85-00014 (S.D. Ala.). The defendants, three voting rights activists from Perry County, Alabama, were prosecuted on charges of conspiracy, mail fraud, and voting more than once by Mr. Sessions as the United States Attorney with two assistants. The 29 count indictment was based, in large part, on the theory of the U.S. Attorney Sessions that it was illegal for the defendants, in assisting elderly and illiterate voters to vote by absentee ballot, physically to mark or to change, with the voter's permission and at their request, the "x's" next to the names of candidates listed on the absentee ballot. After a three week trial, a jury of seven blacks and five whites acquitted all defendants of all charges, having deliberated for less than four hours.

The defendants were active in the Perry County Civic League, an organization they formed in 1962 to get blacks the right to vote. In 1962, there were less than 200 blacks in Perry County registered to vote. Mayor Andrew Young testified as a defense witness that one of the defendants led the mule train at Dr. Martin Luther King's funeral, and was chiefly responsible for the idea of the march from Selma to Montgomery in 1965 that led to passage of the 1965 Voting Rights Act. Dr. King, who marched with the defendants and others from Perry County in 1965, wrote at the time how impressed he was with the people of Perry County and with their determination to press for the right to vote. Dr. King was particularly struck by the fact that on one day alone almost one half the adult black population of the City of Marion within Perry County was arrested while engaged in a nonviolent protest of the denial of their franchise.[1] As Dr. King predicted in 1965, the people of Perry County, under the banner of the Perry County Civic League, continued even after passage of the 1965 Voting Rights Act to organize blacks in the county to register, vote and run for elected office.

Two of the defendants, Albert Turner and Spencer Hogue, Jr., were officers of the Civic League. In that connection, and in conjunction with other community leaders, they played an important role in the lives of many blacks in the county. Perry County is a rural, poor county and many of its residents are illiterate or barely literate. In the early 60's the defendants helped teach these residents to sign their names in order to attempt to pass the literacy test then in effect. Even today, Mr. Turner and Mr. Hogue minister daily to the needs of elderly and home bound residents. They deliver food, bring medicine, and carry people to the hospital. They are trusted and depended upon.

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[1] "The Right To Vote - the No. 1 Civil Right," The N. Y. Times, Sunday Magazine, March 14, 1965.

Particularly with regard to the exercise of the franchise, they are instrumental in insuring that all eligible voters who wish to vote can. As Steve Suitts, former executive director of the Southern Regional Council, attests in his affidavit accompanying my testimony, "both history and current circumstances make it necessary for private black citizens to assist the black elderly in voting .... [V]oting assistance ... at the ballot box and with absentee ballots is key in such places." Not just the elderly, but those who are illiterate, who work out of town and who cannot get to the polls on election day (which is not surprising since there is no public transportation and the polling places are not in walking distance) need assistance in voting and often must vote by absentee ballot in order to vote at all.

Many of these people solicit the assistance of community leaders like Mr. Turner and Mr. Hogue. When called as witnesses by the U.S. Attorney, these voters proclaimed loudly that they trusted Mr. Hogue and Mr. Turner, that they asked them to help them vote and that they couldn't have voted without this assistance.

Mr. and Mrs. Turner and Mr. Hogue all cooperated with Mr. Sessions' investigation, voluntarily testifying before the grand jury. In their grand jury testimony, which the U.S. Attorney introduced at trial, Mr. Turner and Mr. Hogue admitted marking the ballots but said they did so only with the voter's permission and in their presence. The testimony at trial and the Government's evidence confirmed the defendants' explanation that the ballots were only marked with permission. The voters, many of whom were uneducated, even illiterate, had tried to guess the candidates supported by defendants. They trusted the defendants, considered them knowledgeable, and relied on their political judgment. When the defendants arrived to pick up the ballot, the voter asked them to check the ballot to see if it was "right" or to fill out the ballot the way "they" (Meaning the Perry County Civic League) were voting. If the voter had guessed wrong, the defendant changed the ballot only after checking whether the voter wanted to support their slate.

Based on the way this case was investigated and prosecuted by Mr. Sessions and two assistants, serious question arise about the judicial temperament, fitness and competence of Jeff Sessions. Those questions deserve close scrutiny in relation to the following issues in the case:

1. Whether Mr. Sessions bothered to determine what the law was prior to, during or even after the case was presented to the jury. Mr. Sessions persisted in the view that filling out a ballot for someone else is illegal despite § 208 of the Voting Rights Act which makes assistance in voting a right, and despite the ruling of both the magistrate and the judge that the United States Constitution and the Voting Rights Act protect voting assistance.
2. Mr. Sessions failed to investigate similar charges against whites. Voter assistance in filling out absentee ballots is widespread in Perry County and throughout the black belt. The actions Mr. Sessions claimed were illegal when committed by defendants were in fact both legal and pervasive. Yet it was only when civil rights activists assisted voters that their activity was criminalized. The targeting of the investigation only against black civil rights workers showed insensitivity to the role they were playing and has had a chilling effect on other blacks' willingness to vote again. This was not a case of vote buying or official malfeasance. This was simply not a case in which the federal government had any legitimate criminal supervisory responsibility.
3. The FBI was not properly supervised in its investigation of the case. Witnesses were intimidated, confused and disoriented by the manner and frequency of questioning. Witnesses were not asked what happened; they were told what happened. The first statement made to voters by FBI agents paying unannounced visits was, "I am the FBI. I have your ballot. Your ballot has been tampered with." Some

of the witnesses were interviewed by phone about ballots they could not see. Others were questioned about ballots they were shown but could not read. Still others were asked about an election they could not remember. Yet, without properly re-interviewing these witnesses, Mr. Sessions nevertheless presented them as part of the government's case, only to be "surprised" by the unreliability of their testimony.

4. There are standards governing the federal interest in prosecuting election offenses. There was no federal interest in this case which only involved candidates running in local races. There were no complaining witnesses other than defendants' political opponents who were the candidates in the local races. Moreover, as to the government witnesses who did testify the judge admonished Mr. Sessions to stop putting on witnesses simply to impeach them with statements they allegedly gave the FBI. The awful legacy of this ill-conceived prosecution is its frightening effect primarily on elderly black voters, many of whom left the witness stand saying, "This is just too much. I won't ever vote again."

It is not that Mr. Sessions lost this case that is the issue. The issue is that he never had a case in the first place from the indictment to the verdict.

These prosecutions represent an apocryphal attempt affirmatively to use the resources of the federal government to stop blacks from voting. The federal official who prosecutes black civil rights workers for attempting to assist elderly and illiterate blacks to vote by absentee ballot should be excoriated not rewarded with life tenure.

I have here the testimony of James Liebman, one of the trial attorneys who is now a law professor at Columbia University. Mr. Liebman has written a comprehensive statement on Mr. Sessions' conduct of these prosecutions which I urge the Committee to consider. I also request that the Liebman statement be made a part of the record of this hearing. For the reasons set forth in my statement and that of Professor Liebman's as well as the affidavits of Deval Patrick and Morton Stavis, I urge this Committee to reject this nomination.

County of Fulton
State of Georgia

Affidavit of Steve Suitts

I, Steve Suitts, being duly sworn, do hereby depose and state: .

1. My name is Steve Suitts and I am the executive director of the Southern Regional Council of Atlanta;

2. For more than fifteen years I have been involved in research, analysis, and studies concerning voting rights in the South. During the early 1970's I was staff member and director of the Selma Inter-Religious Project which provided non-partisan legal and technical assistance to community leaders in southwest Alabama and southeast Mississippi. For five years in the 1970's, I served as executive director of the Civil Liberties Union of Alabama and was responsible for the general supervision of reports and litigation which often focused on voting rights. Since 1977 I have served as the executive director of the Southern Regional Council, a non-profit, free-standing organization which has carried out research, analysis, and technical assistance on a range of important regional issues, including voting rights, for 41 years.

3. During my tenure with these three organizations, I have been involved consistently in the study of barriers to voter participation by black citizens and of effective means by which racial discrimination can be removed from voting in the South. I have provided general supervision for projects carrying out primary research on voting trends and barriers to full political participation. I have published more than twenty monographs and articles analyzing voting trends, barriers to voting participation and remedies for racial discrimination in voting. I have provided expert testimony or analysis for more than fifty administrative and court proceedings. Also, I have been requested to testify on several occasions as an expert on voting rights by the Committees on the Judiciary of the U.S. Senate and the U.S. House of Representatives.

4. Because of my work and research, I have become very familiar with barriers to political participation in the rural areas of the South and especially the areas known as "the Black Belt." I'm also familiar generally with developments, trends, and conditions in Perry County, Alabama.

5. Both history and current circumstances in the Black Belt of Alabama and Perry County make it necessary for private black citizens to assist the black elderly in voting. In order to assure that political participation is not limited by race or age, voting assistance for citizens by private citizens at the ballot box and with absentee ballots is key in such places. In the Black Belt and Perry County, the level of education for the adult population, and especially the elderly, is very low. By the 1980 census, only forty-three percent of the total population over the age of twenty-five in Perry County had a high school diploma, although fifty-seven percent of all Alabamians of that age had high school diplomas. For the elderly and black, the level of education is much lower. For example, the number of persons twenty-five years or older with four years of high school education in 1950 in Perry County -- those who would be fifty-five years or older today -- was only 110 of 5,780 blacks.

6. The need for voting assistance by private black citizens to the black elderly is also supported by the history of racial exclusion, tension, and violence in Perry County. The right of a black citizen to register to vote in Perry County was not observed generally before 1965. Records of the Southern Regional Council suggest that fewer than 100 black voters were registered in Perry County at that time when more than 6,000 were eligible to register. Blacks who protested this denial of the right to vote in 1965 were met with hostility, arrest, and violence. In February 1965, Jimmie Lee Jackson, a black activist working to increase voting rights of blacks in Perry County, was murdered. Afterwards, when racial violence diminished, white resistance in the county continued. In this majority black populated county, government services and institutions, such as schools, were not desegregated for several years afterwards. The

effects of this history are real and direct upon many elderly blacks. For example, a black woman at the age of 67 today in Perry County has spent almost three-fourths of her life in segregation where blacks could not vote, could not attend white schools, could not use public toilets, and had to have a white person vouch for her in order to obtain loans or government services. Under the circumstances it is important that the black elderly in places such as Perry County have private citizens whom they trust to assist in exercising the right to vote.

7. Limited by a history of racial exclusion and violence and the low levels of education, often the result of government enforced segregated education, the elderly black population in Perry County constitutes a substantial number. In 1980, fifteen percent of the total population was sixty-five years or over although throughout Alabama only eleven percent of the total population was that old.

8. The need for private assistance in voting is not limited today in Perry County to only the black elderly. Due to employment patterns, thirty-one percent of the working population of Perry County commuted to work outside the county in 1980. Since people work outside the county of their residence, absentee balloting is an important means by which the right to vote can be exercised in Perry County. These workers, as well as the elderly, may often require assistance because of their general low level of education. Also in light of the history of racial tension in the county, these blacks may turn to private black citizens for assistance in voting.

9. The right to vote in Perry County and other counties of the South's Black Belt remains impeded by practical barriers. The number of days, the location, and the times at which a citizen can register to vote in Perry County are limited severely in comparison to more urban and suburban locations. Often, citizens rely upon other private citizens to assist them in registering to vote in places like Perry County. Because of low levels of education, high rate of elderly population, and a large

percentage of commuting workers, many citizens in Perry County need assistance with voting. With a history of racial tension and exclusion, black voters often turn to other private black citizens for assistance in voting at the ballot box and with absentee ballots. Black citizens who assist black voters in this way provide an important public service and perform a useful civic duty.

10. Over the last several years, elderly black voters in the Black Belt have come to depend over time upon black citizens, often civil rights advocates, to perform this assistance. From my own research, study, and personal observation I have found that the relationship between the civil rights advocates and elderly blacks is based upon trust, oral communications, and assumptions. The advocate must often interpret the oral instructions of the voter in light of their past relationship and understanding. For instance, I once observed an elderly black voter in the Black Belt say, "I want it done like last time," in stating how she wished to vote. Yet, few people were on the ballot this time who were on the ballot at the last election. Because I was present, the black civil rights advocate asked the woman a question he later told me he already had answered for himself. "You want to vote for the blacks running?" The elderly woman replied rather heatedly, " . . . you know that's it. Don't you make fun of an old woman like me." This exchange merely illustrates the fact that in the Black Belt effective voter assistance by civil rights advocates often requires them to make a good faith interpretation of oral instructions, which may not be plain in meaning to others who do not know the assumptions established over time in their relationship. If civil rights

advocates were to deal differently with many elderly and poorly educated voters, it is my opinion that they would discourage many of these people from exercising their right to vote.

The foregoing is true and accurate to the best of my knowledge, information, and belief.

Executed on this 5th day of April 1985, in Atlanta, Georgia.

Steve Suitts

Sworn and subscribed before me on this 5th day of April 1985

(Notary Public)

Notary Public, Georgia, State at Large
My Commission Expires May 28, 1988

Mr. LIEBMAN. What I wanted to talk about briefly here is a matter that I refer to only at the very end of my written statement, and that goes to some matters that go beyond the selective prosecution issue but are related to it. That involves a number of statements that Mr. Sessions made during his testimony here as well as in the Federal district court in Mobile that I would like to discuss because I believe that the facts are different than those that Mr. Sessions put forth in those contexts. I will list a number of those. If I do not have time to reach all of them, I will request leave to submit a supplemental written statement on any I cannot get to.

First, Mr. Sessions represented to the court in Mobile and I believe to this committee as well that before indicting the three defendants in the *Perry County* case he reached two conclusions. First, he says that he concluded that every absentee ballot which had an allegedly unconsented change on it reflected a change from a candidate that was opposed by the three defendants to a candidate that the three defendants supported.

Second, he said he reached the conclusion that every one of those ballots with unconsented alterations on them was mailed or handled by one of the three defendants.

The facts on that, Mr. Chairman, are otherwise. I would like to take as an example—there are others listed in my statement—a ballot of a voter who I will only identify by initials N.S. because I do not want to breach the secrecy of that ballot. FBI Agent Gary Clem testified to the grand jury in Mobile—and either Mr. Sessions or one of his assistants was there at the time—that the absentee ballot of N.S. was "tampered with," that is, that someone had altered the vote on that and had done so without the permission of that voter who had so informed Agent Clem.

Now, if we look at that ballot, we can ask the question, "how was that ballot altered?" It was altered from a candidate that the three defendants supported to a candidate that the three defendants opposed.

Now, the second conclusion that Mr. Sessions testified to concerned who mailed that ballot. Did the defendants touch that altered, apparently fraudulently altered ballot? Well, if you look at the ballot, it is notarized by and it was mailed not by these three defendants, but by one Andrew Hayden who is the mayor of Uniontown, AL, and enjoys the support of the white voter groups in the area. And as you will see in my statement, there are scores of ballots that Mayor Hayden either notarized, mailed, signed, or otherwise handled which have very suspicious markings on them such as those on this ballot of N.S.

And unlike the candidates that the three defendants supported, the candidates that Mayor Hayden supported won this election perhaps because of those ballots that Mayor Hayden touched with these very suspicious markings on them. Yet, Mr. Sessions never investigated and, of course, never indicted Mayor Hayden. So those two conclusions that Mr. Sessions reached I think are inaccurate to the extent that there were changes from candidates supported by the three defendants to candidates opposed by them that were not consented to that were fraudulent, and those ballots were handled by people other than the three defendants who were not indicted or investigated further than FBI Agent Clem testified about.

Second, in explaining to the committee why he brought this indictment, I fear that Mr. Sessions may have given the impression that every ballot relied upon in the indictment both had an alteration on it and that that alteration was unconsented to. Again, any such impression would be inaccurate. A significant number of ballots that were relied upon at trial had no alteration whatsoever on them. For example, Robert White's. In fact, there was no claim by anybody that there was an alteration on that ballot.

Moreover, the Government took to the jury a large number of additional ballots—and I will give two examples, Reaner Green and Murphy Reed—on which there was unequivocal, uncontradicted testimony that any change made on those ballots was consented to—was asked for or made by—the voter.

Well, the question came up at trial, what exactly was Mr. Sessions' legal theory that he was proceeding with that would allow him to go forward with ballots that did not have unconsented alterations? And he explained that theory through his assistant at trial.

What happened was that I sought to clarify what the Government's theory was in the transcript at pages 17 to 18, and I asked, "What about a situation where a wife says to her husband or a husband to his wife, 'I don't know how to vote in this case, you tell me how to vote and I will vote that way'." And I said "the U.S. Attorney's office has indicated," as it had on the phone, "that that type of situation would fall within their idea of illegality under the indictment."

Mr. Sessions' assistant then stood up and answered to the court, to my question, "is that within their theory of voter fraud," by saying yes, "that is one of our theories." In other words, when, for example, illiterate absentee voter Reaner Green told Mr. Hogue—and this is a quote from her testimony—"I want to vote the way y'all are voting," and then he filled out her ballot that way because she was illiterate, Mr. Sessions expressly considered that to be an illegality and proceeded against the defendants on that theory.

I think I need not remind the committee that that very type of voter assistance of illiterate voters is not illegal. In fact, that activity was protected both by the 1982 amendments to the Voting Rights Act and in fact has been held for about 20 years to be constitutionally protected activity.

Third, Mr. Sessions testified here that he brought these charges in part because the number of absentee ballots voted in the September 1984 primary election was "extraordinarily high." In fact, as the Perry County absentee voter clerk testified at trial, the number of absentee ballots voted in that September 1984 primary was actually lower than in any other general election in that county for the past five elections. It was lower by a factor of several hundred than the next previous primary election. So there was not an extraordinarily high number of ballots. In fact, there was a low number of ballots.

Fourth, Mr. Sessions testified that he brought these charges also in part because he wanted to take the prosecution or the case out of the hands of a potentially biased and nonobjective local DA and take it over for himself.

Well, the fact is, Mr. Chairman, that District Attorney Roy Johnson repeatedly publicly stated—and Mr. Sessions' assistant essentially admitted at the selective prosecution hearing in court—that this investigation and this case was conducted as a "joint effort" between District Attorney Johnson and Mr. Sessions' office.

For example, every witness who was interviewed by the FBI was also simultaneouly interviewed by someone from the local DA's office. Employees in the local DA's office were the people who rode in the bus with all of the witnesses from Selma to Mobile, to the grand jury, and in fact the local DA's office hired the bus.

When I went to interview witnesses, an agent of the local DA's office in the DA's official car followed me around and reported, as I was later informed by the FBI, on my actions to the FBI while I was conducting my investigation as an attorney in the case. And, finally, there were DA officials in the interview room at the courthouse all the time during trial helping the Government to prepare witnesses.

So, the fact is that Mr. Sessions' involvement in the case did not remove the potentially biasing and nonobjective influence of the district attorney but, rather, just added to the district attorney's resources by adding the FBI, the grand jury and——

Senator **Denton**. Excuse me, Mr. Liebman. How much longer is your statement? I know your students are important, but these four gentlemen have things to do and we have many other witnesses who have traveled half the country to testify for 5 minutes and you are sort of retrying the Perry County thing and we are going to have witnesses refute what you are saying and countermand your own testimony, so we would appreciate it if you would sort of sum up quickly, please.

Mr. **Liebman**. OK. Senator Denton, I will just stop right there with the conclusion simply that there are a number of statements that Mr. Sessions made in explaining why he brought this prosecution which I simply wanted to straighten out for the record, and there are a couple others which I will submit in writing.

Thank you very much.

[The prepared statement of Mr. Liebman follows:]

TESTIMONY OF
JAMES S. LIEBMAN

Assistant Professor of Law
Columbia University School of Law

My name is James S. Liebman. Since January 1986 I have been Assistant Professor of Law, Columbia University School of Law. From November 1979 to December 1985 I was Assistant Counsel, NAACP Legal Defense and Educational Fund, Inc. (LDF). In that capacity I was one of the attorneys who represented Spencer Hogue, Jr. Prior to my tenure at LDF, I was law clerk to the Honorable John Paul Stevens, Associate Justice, United States Supreme Court.

In January 1985, Jefferson Beauregard Sessions III, United States Attorney for the Southern District of Alabama, brought a voter-fraud indictment against three black civil rights leaders in Perry County, Alabama -- Spencer Hogue, Jr., Evelyn Turner and Albert Turner. As set out in the first two counts of the indictment itself, the actions which Mr. Sessions characterized as "fraud" grew out of the three accused citizens' longstanding efforts to enfranchise blacks in Perry County, including through the use of absentee ballots by the county's large population of elderly, bed-ridden, and often nearly illiterate black citizens.

As you know, Mr. Chairman, after the court itself had dismissed many of the counts in the indictment, a jury of black and white Alabama citizens acquitted the three defendants of all remaining charges. Nonetheless, the indictment of these three people was a serious and disruptive matter not only to the wrongly accused citizens, but also to the entire Perry County Community, and particularly the black members of that community, among whom the names Turner and Hogue were synonomous with the recent advent of their right -- and ability — to vote.

Mr. Sessions' prosecution of the Turners and Mr. Hogue was more than simply ill-founded and disruptive. It was also unique in the annals of federal voter-fraud prosecutions: Justice Department documents reveal that Mr. Session's prosecution of the Turners and Hogue marked the first time a United States prosecutor had ever applied a federal voter-fraud statute to an alleged absentee-ballot conspiracy that did not involve corrupt public officials, virtually the first time a federal prosecutor had done so in a situation in which the allegedly affected electoral contests all involved strictly local offices, the first time a federal prosecutor had done so when so few allegedly illegal votes (less than 30) were cast, and the first time the candidates supposedly benefitting from the fraud alleged by the Government had lost the election. [These facts are based on the Justice Department Voter Fraud Prosecution Manual, Exhibit Q to the Selective Prosecution Motion, and the Justice Department press releases, Exhibit R.] Indeed, for these reasons, Mr. Session's prosecution appears to violate the Justice Department's own guidelines for when federal prosecutors may bring this type of indictment,[1] and the manner in which Mr. Session's office conducted the investigation leading to the indictment clearly violated the Department's guidelines in a number of respects.[2]

Why, then, did Mr. Sessions pursue this ill-founded, unprecedented, and regulation-violating indictment? After investigating that perplexing question, defense counsel for the Turners and Hogue were compelled to file a 75-page Motion to Dismiss the Indictment as the Product of An Invidiously Selective Prosecution, supported by several hundred pages of exhibits. Copies of the entire file of documents relating to the Selective Prosecution Motion have been provided to the Committee, including numerous sworn affidavits of Perry County citizens. The Motion and supporting documents detail two things: first, the innocent -- indeed, constitutionally protected -- voter assistance activities on behalf of elderly black citizens which were the focus of Mr. Sessions' investigation; and, second and more important here, a series of well-documented irregularities in absentee voting procedures committed by and on behalf of certain white and white-supported Perry County candidates, which -- while known to Mr. Sessions -- were never investigated by him, nor, of course, did they result in any indictments.

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[1] [The various ways in which Turner/Hogue indictment violates Justice Department Guidelines are described in the original Selection Prosecution Motion at pp. 26-29, discussing the very low priority given fraud such as that alleged in the Turner/Hogue indictment by the Department's Federal Prosecution of Election Offenses Manual (Exhibit Q).]

[2] [The various ways in which the Turner/Hogue investigation violated Justice Department guidelines, set forth in its prosecution Manual (Exhibit Q) are set out in the original Selection Prosecution Motion at pp. 19-21.]

Selective Prosecution charges are, of course, not made lightly. Particularly in cases involving prosecutions by United States Attorneys, such charges are rare, both because of the integrity typically maintained by U.S. Attorneys and because of the high legal hurdles which must be cleared before the courts will even consider such charges. Thus, in order to secure judicial consideration of selective-prosecution charges, a defendant must produce credible evidence, not only that the prosecutor was selective -- that is, he prosecuted some defendants but not others similarly situated -- but also that the prosecutor was motivated by some intentionally invidious or discriminatory purpose in singling out the defendants for prosecution. Few defendants, as I said, even make such charges against federal prosecutors, and fewer still have such charges taken seriously by the courts.

In this respect, as well, Mr. Sessions' ill-fated prosecution of the Turners and Hogue verges on the unique. After considering the selective-prosecution papers filed by the defendants in this case, and conducting a day long hearing on the matter, the United States Magistrate for the Southern District of Alabama concluded that defendants had satisfied the first prong of their burden to get a hearing on selective prosecution, by producing credible evidence in this record that, in bringing the Turner/Hogue indictment, "the Government [-- Mr. Sessions' office --] was activated by constitutionally impermissible motives such as racial ... discrimination." Second, the Magistrate found that "[t]here is credible evidence adduced by the Defendants that a number of absentee ballots cast in Perry County in September, 1984, contained irregularities related to candidates marking, witnessing, attestation, and mailing; ... that the preparation of some of these ballots likely was connected with voter assistance activity carried out by groups in Perry County which are led by whites; and ... that these ballot irregularities have not been investigated, nor the individuals apparently connected with the ballots prosecuted." [May 24, 1985, Recommendation, at 3; see also id. at 6, 8.]

Although the Magistrate, and the United States District Judge to whom the Magistrate reported, did not take the drastic step of dismissing the indictment, both judicial officers did take the extraordinary precaution of admonishing Mr. Sessions to keep his charges and proof at trial confined within the bounds of the law, and particularly the Constitution; and when he failed to do so, the District Judge dismissed more than half of the counts in the indictment in the middle of trial as lacking in any evidentiary support. Subsequently, of course, the jury acquitted the three defendants of all remaining charges.

I, of course, do not have the time here to describe all the evidence of voter fraud on behalf of white, and white supported, candidates which Mr. Sessions failed to investigate, while pursuing his ill-conceived indictment of Albert and Evelyn Turner and Spencer Hogue. A few examples will have to speak for the many others detailed in the Motion and supporting papers:

First, although Mr. Sessions repeatedly represented to the Court and to the public that his office investigated the circumstances of each and every absentee ballot voted in the September 1984 election which reflected a change from one candidate to another, and that he did not, as charged, confine his investigation to absentee-ballot changes from white or white-supported candidates to black candidates, the facts, pure and simply, are otherwise.

N S , for example, an elderly black resident of Uniontown, Alabama distinctly remembers voting for Setzer Howard, a political ally of the Turners and Hogue, for the position of County Commissioner. In all other respects, Ms. S voted for the slate officially supported by the county's white voter groups. Ms. S then turned over her ballot to Uniontown Mayor Andrew Hayden, for mailing. Mr. Hayden has long been politically opposed to the Turners and Hogue and supported by the white voter groups in the area. When Ms. S 's ballot was opened on election day, the "x" for Setzer Howard had been "whited out" — Ms. S has never had "white out" or "liquid paper" in the rural home where she spends most of her time because of ill-health -- and a new "x", in a different color ink, had been placed beside Reese Billingslea's name. Billingslea, I should add was the candidate the white groups successfully supported against Setzer Howard.

When questioned by a defense investigator, Ms. S adamantly insisted that she voted for Howard and never authorized anyone to change that vote to Billingslea. Ms. S also indicated that she previously informed the FBI of these facts, but that Mr. Sessions did not follow up on the on-its-face highly suspicious, and (as it turns out) fraudulent-in-fact change on her ballot. Nor did Mr. Sessions require Ms. S to testify before the grand jury about this change from a black-supported to a white-supported candidate. [See Exhibits TT, WW.]

Similarly, the ballot of E M ., a white Perry County citizen, reveals a vote for Setzer Howard which was erased and replaced with a new, different-colored "x" for Reese Billingslea -- once again conforming the ballot to the straight slate of white and white-supported candidates officially endorsed by the white voter groups in the area. When asked about her vote by a defense investigator, Ms. M , like Ms. S , said she'd voted for Howard, not Billingslea, and that she had neither made nor consented to any changes in the ballot. More to the point here, Ms. M ' obviously altered ballot was apparently not investigated by Mr. Session's office.

Third, although the absentee ballots of many patrons of a senior citizens center in Uniontown, Alabama were voted and signed in the same color felt-tip pen with what appears on its face -- and expert handwriting analysis confirmed -- was the same handwriting, that of Andrew Hayden, who also witnessed each of those ballots, and although all those ballots were identically voted for the same white-supported slate and simultaneously mailed to the Perry County Clerk, Mary Auburtin, from Montgomery, Alabama, scores of miles away, none of the patrons of the center were ever questioned by Mr. Sessions' investigators. When some of the alleged voters were questioned by defense investigators, their answers clearly demonstrated that some had no idea for whom they had voted, and none had any recollection of signing the form necessary to apply to vote absentee. [Exhibit TT, pp. 2-4; esp. M. E.].

Even more curious, at least three of the ballots witnessed by Mr. Hayden and his employees and voted for the white slate showed on their faces that they were "witnessed" two days after they were supposedly voted and mailed in by the voters, and, indeed, a day after they were marked "received" by the office of county clerk, Mary Auburtin -- thus, notwithstanding the requirement that the ballot be witnessed simultaneously with the voter's marking and signing the ballot. [Exhibits OO-RR.] Not only did Ms. Auburtin's office officially count these facially fraudulent votes for the white slate, but Mr. Sessions thereafter failed to inquire of any of the 3 alleged voters about how Mr. Hayden and his employees came to witness the ballots days after they were supposedly voted.

Fifth, Mr. Session's office, although repeatedly informed of the matter, made no investigative inquiry whatsoever into the fact that Ms. Auburtin, in direct violation of her own procedures, state law, and, apparently, federal voter-fraud provisions, took it upon herself to mail out campaign literature favoring white-supported candidate Reese Billingslea simultaneously with, and sometimes in the same official envelopes as, the absentee ballots themselves. [Exhibit U.] As a result, large numbers of black absentee voters, many of whom were voting for the first time and have trouble reading, immediately filled out their ballots for Billingslea, notwithstanding their support for the alternative slate of candidates which included Billingslea's opponent Setzer Howard. Indeed, almost all the ballot changes for which the three defendants were indicted turned out at trial to be the voter's own or consented-to changes from Billingslea to Howard prompted by the voter's discovery that they were not obliged to vote for Billingslea notwithstanding that his literature accompanied their ballots.

Sixth, Ms. Auburtin's office received and counted the absentee votes of white former residents of the County (including, for example, the long time superintendent of the local school system), whom it was well known -- as was apparent, from the addresses on the ballots themselves -- were no longer residents of the county and hadn't been for years. [6/3/85 Affidavit of Robert Turner, with attachments]. Again, these ballots were facially suspect, given the voter's oath of residency in the County, yet, again, Mr. Sessions made no attempt at all to investigate these patent voter irregularities favoring the white slate.

I could go on, Mr. Chairman, but I fear I've taken too much of the Committee's time already. What I hope has become clear is that even while pursuing a baseless indictment against black civil right workers who assisted elderly black voters to exercise their hard-won right to vote in favor of black candidates, Mr. Sessions had before him, but failed to investigate, substantial evidence of white voter fraud -- fraud which affected the same absentee balloting process with which, Mr. Sessions was so concerned when it allegedly favored losing black candidates, but which he utterly ignored when it actually propelled white and white-supported candidates into office.

Mr. Chairman, this pattern of racially selective enforcement of the laws of this land by Mr. Sessions was distressing enough, once it came to light. What was even more distressing about the conduct of this case, however, is the fact that Mr. Sessions -- an officer of the United States Government as well as of the courts, and now a nominee for lifetime tenure as a federal judge -- in my opinion, misrepresented the facts of this investigation in documents filed by him in court. Thus, notwithstanding his failure to investigate, for example, the highly visible pattern-voting and apparently fraudulent witnessing of pro-white ballots by Uniontown Mayor Andrew Hayden, the counting of obviously improper out-of-county and improperly witnessed pro-white ballots by court clerk Auburtin, the erasure and change of E M ' vote from Setzer Howard to white-backed Reese Billingslea, and the even more obvious and suspicious "white out" of N S 's vote for Howard and substitution for it of a vote for Billingslea, Mr. Sessions made the following unqualified and incorrect representations to the court: First, Mr. Sessions represented that "every ballot" -- here, Mr. Sessions himself has underscored the word every -- "every ballot, whether it had been mailed by the defendants or not, was examined to see if it had been altered in any way." Mr. Sessions represented to the Court, second, that "[a]ll" those voters whose ballots had suspicious markings on them "were interviewed"; and, third, and most distressing, Mr. Sessions represented to the court that all "votes that had been altered without the permission of the voters involved a change to a Black candidate supported by the defendants...." [Government's June 14, 1985 Response to Objection to Sequestration and Request for Protective Action].

It is one thing -- a very bad thing -- Mr. Chairman, to stretch the laws of this country to indict civil rights workers for nothing more nor less than assisting elderly blacks to exercise their franchise. There, however, such behavior is, at least, checked -- as it was in this case -- by the good sense of American jurors, who ultimately pass on the validity of such indictments. It is quite another thing, however, to exercise that prosecutive power selectively, apparently on the basis of race, and then, when called to account for it to misstate the facts to a court. In matters such as this -- as in all matters affecting the integrity of our judicial system and its judges -- the system simply cannot function if the people involved do not hold themselves to a higher standard of conduct than Mr. Sessions has evidenced here.

Senator **Denton**. Thank you, Mr. Liebman. Please remain for questions.

For your information, Senator Kennedy informed me yesterday that he has no problem with the fact that Mr. Sessions brought that case to trial and he has reviewed it extensively. That is just a piece of information.

Regarding the absentee votes, in 1982 in Perry County—these are rough figures—out of something like 5,000 or 6,000 votes cast, there were 1,000 absentee votes. In Jefferson County, the largest county in Alabama, which includes the city of Birmingham, in the 1982 election, to give you some comparability in the primary, there were about 250,000 votes cast, with 250 absentee ballots, 1 in 1,000 as compared to 1 in 6.

Mr. Siegelman, who was going to run against me and has since retired, was secretary of state for the State of Alabama. His main thing is trying to clean up voter fraud. He is a Democrat in the State of Alabama.

A State senator, one of the most prominent Republicans in the State legislature, his principal thing is to clean up voter fraud in Alabama. I am not saying it is black. I am not saying it is white. I am saying that both Democrats and Republicans realize there is voter fraud in Alabama and are making an effort bipartisanly to clean it up, and I dispute what you have in your prepared testimony.

Fact one, you said that the U.S. magistrate for the Southern District of Alabama concluded, in reference to the Turner-Hogue indictment, that "The government"—meaning Mr. Sessions' office—"was activated by constitutionally unpermissible motives such as racial discrimination."

I have the copy of the magistrate's ruling and nowhere in it does that kind of finding that you have cited appear. There is zero reference to anything like that, so I question the premises from which you are coming.

Mr. **Liebman**. If I may respond, Mr. Chairman. You were correct that a thousand people did vote in that 1982 primary election by absentee ballot. Of course, of those, approximately one-third were white absentee voters and these are from the figures of the county clerk.

I would just point out that that number dropped from 1982 when, of course, no investigation was conducted, to just over 775 absentee ballots in 1984, so——

Senator **Denton**. Compared to 250 out of 250,000.

Mr. **Liebman**. All I am pointing out is that the number did drop, so there was not——

Senator **Denton**. I realize that they dropped but the percentage is still ridiculously high and that is true with a liberal or a conservative.

Mr. **Liebman**. Well, high or low, the fact is that many, a large number, of those voters are white absentee voters, and those people were not investigated. The percentage of absentee votes between white and black is approximately the same as the percentage of the people in the population of the county, that is there are about as high a percentage of white absentee ballots voted as there are white people living in that county.

There is a lot of testimony, included in a Lani Guinier's statement here, which indicates why a large number of blacks in that area have to vote absentee, which goes to the fact that a very high percentage of the blacks in that area are now very elderly. It is just a demographic fact. There is no public transportation; they live in rural areas; many of them work outside of the county and they have to vote absentee. There are demographic differences, that is, between Jefferson County and Perry County.

Now, getting to the——

Senator **Denton**. You can come on again, but I just have to get to these other witnesses. You have used Mrs. Green as an example of someone who just wanted tc vote like you all. Mrs. Green did not say that in her affidavit. Mrs. Green said that her vote was changed and that she was angry about it.

Mr. **Liebman**. She said that under oath, Your Honor, at the trial. Those affidavits were taken by FBI agents and we have put in a lot of testimony that indicates that the FBI agent went up to the voter and said, "Ms. Green, your ballot has been tampered with," leading a scared witness to give cautious statements to the FBI.

Senator **Denton**. OK. We are going to have a lot of witnesses who were there in Perry County with the FBI, with the voters, who are going to testify later. We do not need a man from Columbia University to testify about hearsay. You said you are going to tell your people about hearsay. Go ahead and tell them, because that is what you are using right now.

Mr. **Liebman**. If I could just respond very briefly, Mr. Chairman. All of what I am basing this on are the statements of——

Senator **Denton**. Would you respond to the accusation about the magistrate and your prepared thing?

Mr. **Liebman**. I was just getting to that when you asked me the next question, Mr. Chairman. I would just turn your attention to page 2 of that recommendation which you have stated that you have before you. It states that the second element of a selective prosecution case requires a showing "that the Government was activated by consitutionally impermissible motive such as racial or religious discrimination." You have got to prove that as well as selectivity in order to get a hearing on selective prosecution.

The magistrate then said at pages 6 and 7 that he would give a hearing to the defendants who brought this case because he found that all of the requirements for selective prosecution charge were met, including this one that he lists as invidiousness—"a showing that the government was activated by constitutionally impermissible motives such as racial or religious discrimination." We had to meet that burden in order for him to find that there was a right to a hearing and he found on pages 6 and 7 that there was a right to a hearing if the government was going to proceed with certain kinds of alleged fraud, for example having to do with notarization, having to do with voter——

Senator **Denton**. Mr. Liebman, you are not addressing the question. We said that in your prepared testimony you were quoted as alleging that the U.S. magistrate concluded things that he did not conclude, and what you are addressing now has nothing to do with what you said he concluded, that the Government was activated by constitutionally impermissible motives such as racial discrimination.

Mr. LIEBMAN. That is a quotation, Mr. Chairman, from page 2 of the recommendations. Those are not my words. Those are of the magistrate.

Senator DENTON. But page 2 refers to burden of proof, not a finding.

Mr. LIEBMAN. And then at pages 6 and 7 he said we met that burden of proof; we had to prove that and he found that we did prove it. If you put those two together, Mr. Chairman, what that means is that we established the invidiousness requirement, that is that the Government "was activated by constitutional impermissible motives such as racial or religious"——

Senator DENTON. I am advised that you represented a burden of proof as a finding and if you want to come back after the others testify, unless Senator Heflin wants to question you, you are welcome, but I cannot hold up everybody else for further debate.

Senator.

Senator HEFLIN. I have one question. The relevancy of your testimony is based on the fact that you were one of the trial attorneys and you were an attorney representing Mr. Spencer Hogue, is that correct?

Mr. LIEBMAN. Yes; Senator Heflin, I want to make that clear.

Senator HEFLIN. If you can find time to come back, I think it would be desirable.

Mr. LIEBMAN. OK. Thank you very much.

Senator DENTON. Thank you very much, Professor Liebman.

Mr. Keeney is no longer here to introduce you all in order, but does someone wish to assume that, introduce the others?

Mr. KOWALSKI. Mr. Chairman, I am Barry Kowalski, from the Department of Justice, Civil Rights Division. I am the Deputy Chief of the Criminal Section.

With us also today are Mr. Albert Glenn, who is an attorney in the Criminal Section, and Mr. Daniel Bell, who is another Deputy Chief in the Criminal Section. Also here from the Civil Rights Division Voting Section is Mr. Hancock.

Senator DENTON. Does anyone have a statement to make?

Mr. HANCOCK. Senator Denton and Senator Heflin, I am Paul Hancock and I do not have a prepared statement but I would like to make a statement in light of the opening statement that you made, Senator Denton.

I want the committee to be aware of why I am here today. I have not volunteered to offer testimony either in favor of Jeff Sessions' nomination or in opposition to Mr. Sessions' nomination. My job responsibility in the Civil Rights Division is to enforce the Voting Rights Act of 1965.

I have been employed by the division for almost 16 years and for the past 10 years I have been enforcing the Voting Rights Act. We have a fairly significant amount of litigation in the southern district of Alabama and we also have nonlitigative assignments in the southern district in connection with the use of Federal observers and Federal examiners, so I have had a good bit of experience in the southern district of Alabama.

The cases that we have brought in the southern district of Alabama have been cases that in some instances have lingered for a long time, they have been tough ones to resolve. I know you all are aware of Mobile litigation that dragged on for a number of years. We also have been litigating similar cases against Marengo County, AL, in Dallas County, AL, that we initially filed in 1978 and do not have a final resolution yet.

So I will say that I have had a substantial amount of experience in litigating cases in the southern district of Alabama. However, I have emphasized to your staff that I have a limited knowledge of Mr. Sessions himself.

I had received a call from the staff of this committee earlier this month and I was asked to talk to the staff about Mr. Sessions' qualifications to be a Federal district court judge, and I refused to do so. I refused to do so in part in conformity with the longstanding tradition that attorneys in the Department of Justice do not get involved in these matters; and second, I told the staff that I thought that I had very little information that would be relevant to this committee's considerations.

On March 12 I received a call from an official of the Department of Justice notifying me that the staff of the committee wished to talk to me on an informal basis regarding the qualifications of Jeff Sessions to be U.S. attorney. I again emphasized that I thought that I had little to add, but that if the department wanted me to appear before the staff on that basis to share with them any information that I might have, I would agree to do it.

My instructions were that the session was to be informal, that I was to answer questions to the best of my recollection, that I was just to give the best shot I could at answering the questions that the staff had.

When I received that notice, I was told that the interview would take place in approximately 1 hour and that I was to be prepared to leave within a half hour after receiving the phone call.

When I appeared before the staff of the committee, there was a representative of Senator Biden's staff and Senator Thurmond's staff, and the testimony was not to be—the discussion was not to be informal but, rather, was to be sworn testimony in the form of a deposition.

I was asked questions about my experience in the Southern District of Alabama, in particular the matter at issue was an investigation that the Civil Rights Division had requested be done by the Federal Bureau of Investigation, which later was canceled at the direction of the U.S. attorney.

I have said throughout that deposition that my recollection of the incident was very vague, although—and I was not even able to say what investigation it was. My recollection at the time was that the investigation occurred in Conecuh County, AL, and that it occurred at the time that Mr. Sessions was the U.S. attorney.

At the time that I offered that statement to the staff, those statements were true to the best of my recollection at the time. Again, it was my understanding that this was to be a discussion between me and the staff. I later learned, however, that the information that I presented at that time was presented to this committee and I wanted to make sure that all of the information presented was accurate, and again I emphasize to you that I made no secret of the fact at the time of my testimony that I did not have clear recollection of all of the event in its entirety.

I do say, however, that it was my recollection at the time that it occurred while Mr. Sessions was the U.S. attorney.

Following that testimony, I initiated an investigation within the Department of Justice to determine whether the testimony was in all respects accurate. I requested that the Federal Bureau of Investigation do a review of all of its files of investigations in the southern district of Alabama for a period from 1979 to 1982, because I was confident that this event did in fact occur and I was confident that it did occur within that 4-year period.

I also requested the staff of the Voting Section to search each file that we maintain about a jurisdiction in the southern district of Alabama, and I emphasize to you that that search is fairly substantial, although there are only 13 counties in the southern district of Alabama, the enforcement of the Voting Rights Act has been going on for 20-some years and we have a voluminous amount of records about the southern district of Alabama.

Late Friday evening I was told that the results of that search showed that we had in fact requested an investigation that had been stopped at the direction of the U.S. attorney, but that the investigation occurred in Clarke County, AL, and that the investigation occurred in May 1980, which was prior to the time that Mr. Sessions became U.S. attorney.

After learning that my recollection that I presented to you last week was wrong, I immediately over the weekend reviewed all of the records that were available to me and drafted a declaration which a member of my staff came in the office on Sunday to type for me and I had it available to present to you the first thing Monday morning.

I also called Mr. Sessions to tell him personally on Monday morning that my prior recollection was in error, and I tell you now that it was in error and I have previously apologized to Mr. Sessions for that mistake and I apologize to this committee.

I do emphasize to you, however, that when I presented the testimony before the staff last week, particularly under the conditions with which I was required to testify, it was true to the best of my recollection.

I would request that the declaration that I presented to you yesterday be made a part of this record and I can state with confidence that that declaration is right and Mr. Sessions was in no way involved with the matter about which I testified last week.

Senator DENTON. Your declaration will be put in the record, without objection.

[The declaration referred to follows:]

U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

March 17, 1986

Honorable Strom Thurmond
Honorable Joseph R. Biden, Jr.
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Jefferson B. Sessions III for the position of United States District Judge

Dear Senators Thurmond and Biden:

On March 12, 1986, I provided information to the staff of the Judiciary Committee concerning a voting investigation conducted in the Southern District of Alabama. I stated my belief that Mr. Sessions was the United States Attorney at the time that the investigation was conducted. A subsequent records search conducted at my request has revealed that Mr. Sessions was not the United States Attorney at the time of the investigation, and thus I am submitting the enclosed Declaration to correct my prior testimony. I request that if my prior testimony is to be considered by the Committee, such testimony be supplemented by the information set forth in the Declaration.

Departmental attorney J. Gerald Hebert also addressed this voting investigation in his testimony before the Committee on March 13, 1986. Mr. Hebert's recollection has been refreshed by the results of our records search and, at his request, I am forwarding his declaration to correct his testimony.

We apologize for any inconvenience caused to Mr. Sessions or this Committee by the prior inaccurate testimony. I am willing to provide additional testimony if it would be helpful in further clarifying this matter.

Sincerely,

Paul F. Hancock

Paul F. Hancock
Assistant for Litigation
Voting Section

DECLARATION OF PAUL F. HANCOCK

1. My name is Paul F. Hancock. I have been employed by the Civil Rights Division of the Department of Justice since 1970 and have occupied the position of Assistant for Litigation in the Division's Voting Section since 1976. I make this Declaration for submission to the Senate Committee on the Judiciary in connection with the nomination of Jefferson B. Sessions III for the position of United States District Judge for the Southern District of Alabama. In particular, this Declaration is submitted to correct and clarify information that I presented to the staff of the Committee on March 12, 1986.

2. On March 12, 1986, at approximately 1:15 p.m., I was advised by an official of the Department of Justice that a member of the Judiciary Committee had requested that the Department permit the staff of the Committee to discuss with me, on an informal basis, certain factual information believed to be relevant to the nomination of Jefferson B. Sessions III. I further was advised that the Department had determined to permit the interview and that a meeting had been scheduled for 2:15 p.m. on that same day.

3. When I arrived for the scheduled meeting, I learned that the discussion was not informal but that the staff desired to examine me under oath and that a transcript of such testimony might be presented to the Committee on the Judiciary to consider in connection with the pending confirmation proceedings.

4. The primary topic of my testimony concerned an investigation, conducted by the Federal Bureau of Investigation, of alleged voting irregularities in a county located within the Southern District of Alabama. I testified that the investigation had been requested by the Civil Rights Division and that the United States Attorney for the Southern District of Alabama subsequently directed the Federal Bureau of Investigation, without prior approval from the Civil Rights Division, not to conduct the requested investigation. Although I emphasized that my recollection of the details of this matter were unclear, I stated that the United States Attorney involved was Mr. Sessions and that, to the best of my recollection, the investigation at issue was one to be conducted in Conecuh County, Alabama. At the time I presented this testimony, it was true to the best of my knowledge, recollection and belief.

5. Inasmuch as the subject FBI investigation may be an issue of relevance to these confirmation proceedings, and since my recollection of the issue was unclear, I subsequently determined to conduct a thorough review of Departmental records to determine if any records regarding the issue were in existence. Our files of matters in Conecuh County, Alabama revealed no information regarding an FBI investigation cancelled by the United States Attorney and, thus, I requested a staff member to review the Voting Section files for each county in the Southern District of Alabama. The review encompassed the period from 1979 through 1982 since I was confident that the investigation at issue occurred during that time period. The Civil Rights Division also requested that the FBI conduct a similar review of its records of voting investigations in the Southern District of Alabama.

6. The search of the Voting Section records confirmed that an FBI voting rights investigation requested by the Civil Rights Division had been cancelled, without proper authority, by the United States Attorney for the Southern District of Alabama; but the search revealed two errors in my prior testimony. First and most importantly, the incumbent United States Attorney for the Southern District of Alabama who cancelled the investigation was not Jefferson Sessions, but a predecessor in the position, William A. Kimbrough, Jr. Second, the investigation was to be conducted in Clarke County, Alabama, not Conecuh County.

7. Appended to this Declaration as Attachment A is a memorandum dated May 12, 1980, from the Director of the FBI to the Assistant Attorney General for the Civil Rights Division enclosing a report dated May 8, 1980. The report states that "William A. Kimbrough, Jr., U. S. Attorney, Southern District of Alabama . . . instructed the Mobile Division of the Federal Bureau of Investigation to discontinue its current investigation." Appended to this Declaration as Attachment B is a memorandum that I forwarded to the Chief of the Voting Section on May 22, 1980, concerning Mr. Kimbrough's effort to cancel our investigation.

8. Following my May 22, 1980, telephone conversation with Mr. Kimbrough, the FBI investigation of voting matters in Clarke County was resumed. On June 9, 1980, the Director of the FBI submitted a report of the investigation. On September 20, 1980, the United States instituted legal proceedings against Clarke County pursuant to Sections 2 and 5 of the Voting Rights Act, 42 U.S.C. 1973, 1973c. United States v. Clarke County Commission, Civ. Action No. 80-0547-P (S.D. Ala.). The Section 5 claim was resolved by an order of the

three-judge court entered on October 24, 1980. The Section 2 claim was resolved by an order entered on April 17, 1981. The United States prevailed on both claims.

9. The record review has refreshed my recollection and I now am able to state with certainty that the issue concerning the United States Attorney's attempt to cancel an FBI investigation (the issue about which I testified on March 12, 1986) arose in Clarke County, Alabama, not Conecuh. I also am able to state with certainty that Jefferson B. Sessions III had no involvement in this matter. The 1980 Clarke County investigation was the only time that I have experienced a United States Attorney attempting to cancel an FBI investigation requested by the Civil Rights Division. In other words, I have no knowledge of Mr. Sessions attempting to cancel, or in any way interfere, with a Civil Rights Division investigation of voting matters in the Southern District of Alabama.

10. I apologize for any inconvenience caused Mr. Sessions or this Committee by my prior testimony. If necessary to further clarify this matter, I am available to answer any questions that this Committee or its staff might have.

Pursuant to the provisions of 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Paul F. Hancock

Paul F. Hancock

Executed on March 16, 1986.

ATTACHMENT A

0-70 (Rev. 8-3-76)

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Docketed 5/20/80

TO : Assistant Attorney General
CIVIL RIGHTS DIVISION

DATE: 5/12/80

FROM : Director, FBI

ATTN: SHIELA DELANEY
VOTING SECTION

SUBJECT:

CLARKE COUNTY COMMISSION, GROVE HILL, ALABAMA; UNKNOWN VICTIMS
CIVIL RIGHTS--ELECTION LAWS

Reference is made to your memorandum dated 3/10/80
(your file DJ 166-3-47).
DSD: SKD: ec

There is enclosed one copy of the ~~report of Special Agent~~ LHM
dated 5/8/80 at MOBILE.

A. ☐ This covers the preliminary investigation and no further action concerning a full investigation will be taken by this Bureau unless the Department so directs.

B. ☐ The investigation is continuing and you will be furnished copies of reports as they are received.

C. ☒ The investigation requested by you has now been completed. Unless advised to the contrary no further inquiries will be made by this Bureau.

D. ☐ Pursuant to instructions issued by the Department, no investigation will be conducted in this matter unless specifically directed by the Department.

E. ☐ Please advise whether you desire any further investigation.

F. ☐ This is submitted for your information and you will be advised of further developments.

G. ☐ This is submitted for your information and no further investigation will be conducted unless specifically requested by the Department.

H. ☐ This covers the receipt of a complaint and no further action will be taken by this Bureau unless the Department so directs.

Enc. (1)

MAY 20 1980

166-3-47
DEPARTMENT OF JUSTICE
7
MAY 15 1980
R. R. O.
CIV. RIGHTS DIV.

FBI/DOJ

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

*In Reply, Please Refer to
File No.*

Mobile, Alabama
May 8, 1980

CLARKE COUNTY COMMISSION
GROVE HILL, ALABAMA;
UNKNOWN VICTIMS
CIVIL RIGHTS - ELECTION LAWS

On May 1, 1980, William A. Kimbrough, Jr., U. S. Attorney, Southern District of Alabama, Mobile, advised he has discussed this matter with Departmental attorneys, Civil Rights Division, U. S. Department of Justice, Washington, D. C. and in view of the recent Supreme Court decision concerning city and county governments, instructed the Mobile Division of the Federal Bureau of Investigation to discontinue its current investigation.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Memorandum

ATTACHMENT B

Subject Clarke County, Alabama
FBI Investigation

Date 22 MAY 1980

To Gerald W. Jones
Chief, Voting Section

From Paul F. Hancock
Assistant for Litigation
Voting Section

I telephoned United States Attorney Kimbrough on May 22, 1980, to determine if he had instructed the Bureau not to conduct the investigation we had requested and, if so, why he gave such instructions. Mr. Kimbrough said that he did instruct the Bureau not to conduct the investigation. He said he had not discussed the matter with anyone from our Section but thought that the investigation should not be conducted for the following reasons:

A. Miriam Eisenstein told him that we are re-evaluating our voting litigation in light of Mobile.

B. The School Board has already given us a lot of information.

C. We should not ask the Bureau to get information from a party to a lawsuit, or a party to a potential lawsuit.

I explained that the investigation concerns a Section 5 matter and is unaffected by Mobile; that we have no lawsuit against Clarke County; that we need the information to enforce Section 5; and that although the county has given us information, we need to clear up unanswered questions. At one point Mr. Kimbrough said: "Well Paul, you and I don't always see eye-to-eye on how to get things done." - (An obvious reference to Marengo)

I asked Mr. Kimbrough to approach us if he has any problems with investigations we request but not to cancel the investigation without our concurrence. He agreed to do so, and apologized for cancelling this investigation. He said he would call the FBI agent responsible for the investigation and tell him to conduct the investigation.

I telephoned Gene Hatfield of the Bureau's Civil Rights Unit and requested that the investigation be completed.

I believe that it was clearly improper for Mr. Kimbrough to cancel the investigation without our concurrence. However, I believe that the matter has been resolved and that it is not necessary to take any other action at this time.

OK. Put in
file for future
reference if
needed. GWJ 5/22/80

DECLARATION OF J. GERALD HEBERT

1. My name is J. Gerald Hebert and I am a senior trial attorney in the Voting Section, Civil Rights Division, United States Department of Justice. I have been a trial attorney in the Civil Rights Division of the Department of Justice since 1973. I make this Declaration for submission to the Senate Committee on the Judiciary in connection with the nomination of Jefferson B. Sessions III for appointment to the position of United States District Judge for the Southern District of Alabama. In particular, this Declaration is submitted to correct and clarify information I provided to the Committee at the hearing held on March 13, 1986.

2. In my March 13th testimony, the statement of my colleague, Mr. Paul F. Hancock, was brought to my attention. Mr. Hancock's referenced testimony concerned a voting investigation in the Southern District of Alabama. I was asked if I agreed with Mr. Hancock's testimony. I answered that my own recollection of that matter was consistent with Mr. Hancock's. When I rendered that testimony, it was true to the best of my knowledge, recollection and belief.

3. Subsequent to my testimony, I have reviewed the documents attached to the Declaration of Paul F. Hancock. Those documents show that Mr. Jefferson Sessions was not the United States Attorney involved in blocking the voting investigation conducted in the Southern District of Alabama and that, in fact, it was his predecessor in office. Those documents also show that the county involved was Clarke County and not Conecuh County. My testimony before the Senate Judiciary Committee ratifying that of Mr. Hancock's, therefore, was in error. My recollection on this matter has now been refreshed. I have no knowledge that Mr. Sessions ever interfered with any voting investigations in the Southern District of Alabama.

4. This revelation concerning the non-involvement of Mr. Jefferson Sessions in interfering in any voting investigations in the Southern District of Alabama does not affect in any way my other testimony rendered before the Senate Judiciary Committee on March 13, 1986.

5. I apologize for any inconvenience caused Mr. Sessions or this Committee by my prior testimony. If necessary to further clarify this matter, I am available to answer any questions that this Committee or its staff might have.

Pursuant to the provisions of 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

J. Gerald Hebert

J. Gerald Hebert

Executed on March 16, 1986.

Senator **Denton**. Are you finished?

Mr. **Hancock**. I have nothing else to say.

Senator **Denton**. Mr. Hancock, it was not at my initiative that you were questioned before this hearing and by the staff. I had no knowledge that that had been initiated. Indeed, the shuffling of witnesses which has occurred on the first hearing and the one that occurred today has made it virtually impossible for me to know who the players are going to be until just before I go home at night after trying to figure out all day. They were working here most of the night trying to figure this out, hence my mistake when I was consulting with my staff member, I did not even know that Professor Liebman, although he said he was—I did not hear him say it—had no opportunity to read until I got here this morning because the stuff was still being prepared because of the shifts in witnesses, anything but some very basic things about what was going to go on today. In other words, I defer to Senator Heflin in having reminded me that Professor Liebman was indeed involved in that case and I missed the point and said we have people who were who will testify and so on. I was dead wrong on that.

I do not have any malice against you for what happened to you. I have nothing but sympathy for your coming and being forced and pressured into giving your best recollection to something which, in my reading, you were very tentative about saying. My chagrin arises from what was made out of your statement and Mr. Hebert's regarding Mr. Sessions.

Now, I have no reservations about your conduct or the fact that you had to give things to the best of your memory, and I believe you did so. Are you satisfied with my——

Mr. **Hancock**. I am satisfied, Senator, except I do not agree with your characterization of the testimony that you said at the beginning of the hearing that I was here to recant my testimony. I emphasize to you that that testimony was true and accurate to the best of my recollection at the time I gave it, that I have since done the investigation that should have been done initially if I would have had the time to do it, and I am now presenting the correct facts to this committee.

Senator **Denton**. Well, your version of it is acceptable and I will not want to apply the word "recant" which was written for me, but I understand that you are not properly— there is no other way but to write it for me. They are still working on it 2 minutes before this thing began.

Mr. **Hancock**. I understand, Senator.

Senator **Denton**. I understand that you did not recant, but what was said about what you said was not accurate in that you were not saying that Mr. Sessions for sure—in fact, you now know that he was not the person involved with the *Conecuh County* case.

Mr. **Hancock**. He was involved with the *Conecuh County* case. He was not involved with the *Clarke County* case, which was the case in which the FBI investigation had been canceled.

Senator **Denton**. Are you saying still that he interfered with the *Conecuh County* case?

Mr. **Hancock**. No, sir. No, sir. I am saying that——

Senator **Denton**. That is the only point I want to make, because that point was used against Mr. Sessions.

Go ahead, Senator Heflin.

Senator HEFLIN. Mr. Kowalski, in your testimony that you gave us yesterday——

Mr. HANCOCK. Mr. Hancock, Senator.

Senator HEFLIN. Pardon me. All right, Mr. Hancock, were you involved in the Perry County case in any degree?

Mr. HANCOCK. I am not involved in any degree in the criminal prosecutions in Perry County, Senator Heflin. We have had activity under the Voting Rights Act, under the civil provisions of the Voting Rights Act in Perry County, but if you are referring to the criminal prosecutions I have no involvement in that matter.

Senator HEFLIN. I don't believe I have any further questions.

Senator DENTON. I would like to recognize Senator Specter and let him know that Mr. Hebert and Mr. Hancock, who just spoke, refreshed their recollections and found that previous testimony indicating that Mr. Sessions had interfered in the *Conecuh County* case is not correct. If he wants to say that is not recanting, that is all right with me. I will not apply the participle, but they changed their testimony that is why he is here today.

Senator SPECTER. Mr. Chairman, just a question or two for Mr. Hancock. I regret that I have other commitments that prevent my being here to hear your testimony as you have presented it up to this point. This may cover some old ground, but what specifically was it that you were able to review by way of records which corrected your recollection?

Mr. HANCOCK. I had requested, Senator Specter, that the Federal Bureau of Investigation conduct a review of its records for the period from 1979 to 1982 of any voting investigations conducted in the southern district of Alabama.

My experience over the years has taught me that the Bureau does not cancel an investigation without making a record of it, so I thought that if the investigation had in fact been canceled there would be a record.

I also requested the staff employed in the Civil Rights Division, in the Division's Voting Section, I requested a member of our staff to review all of the files that we maintain regarding jurisdictions in the southern district of Alabama for that same 4-year period. That review revealed to me, brought forth to me records that showed that in fact there was a situation that arose a number of years ago in which we had requested an investigation of an alleged voting rights violation in the southern district of Alabama and the U.S. attorney had in fact directed the Bureau, without our consent, not to conduct that investigation. The records that were presented to me were a memo that I wrote memorializing my conversations with the U.S. attorney and noting my disagreement with what had been done.

I also was able to locate the memo from the Bureau stating that the investigation had been cancelled at the direction of the U.S. attorney. What I learned refreshed my recollection, that that was the event to which my memory had taken me back. However, it involved Clarke County, AL, not Conecuh County, AL, and it arose prior to the time that Mr. Sessions was U.S. attorney.

Senator SPECTER. So you had the wrong county?

Mr. HANCOCK. Yes, sir.

Senator SPECTER. And the wrong U.S. attorney.

Mr. HANCOCK. And the wrong time, yes, sir, and the wrong U.S. attorney. And I have prepared a declaration which I delivered yesterday morning to the committee and I set forth those events in more detail in the declaration and I have also provided copies of the memo that I wrote and a copy of the FBI's memo noting that the U.S. attorney had canceled.

Senator SPECTER. What was it which initially led you to be concerned that your initial testimony was incorrect?

Mr. HANCOCK. I said before your arrival, Senator Specter, that I was asked to appear before the committee on very short notice, less than an hour's notice, I was told that the discussion was not testimony but, rather, was to be an informal discussion and that I was to answer questions to the best of my recollection.

I later learned that—of course I learned when I got here that it was to be a deposition and I later learned that the results of the deposition were presented to this committee.

I refer you to my deposition, Senator Specter. I said many times in the deposition that I had a very vague recollection of what actually happened in that incident, although I was very convinced that the incident did occur and I was fairly confident that it occurred when Mr. Sessions was U.S. attorney.

However, because of the fact that it was something that was at issue that was being presented to the committee, it was not just background for the committee staff, and because of the fact that my recollection was very vague on it, I requested the investigation and review of the files. It was not done by any superiors in the Civil Rights Division or the Department of Justice.

Senator SPECTER. So your answer is you just did it on your own because of concern for the vagueness of your own recollection?

Mr. HANCOCK. Sure.

Senator SPECTER. There was no other specific triggering factor?

Mr. HANCOCK. There was none. In my opinion, my conclusion was that Mr. Sessions is entitled to have true and accurate facts before this committee and if I was in a position to gather them it was my duty to conduct the review and——

Senator SPECTER. That is obviously true, but you are an experienced lawyer, how long have you been at the bar?

Mr. HANCOCK. I have been a member of the bar since 1970.

Senator SPECTER. Well, that is 16 years. You are a litigator?

Mr. HANCOCK. Yes, sir.

Senator SPECTER. Do you question witnesses with frequency?

Mr. HANCCOK. With some frequency.

Senator SPECTER. Do you question witnesses where the oath is administered?

Mr. HANCOCK. I do.

Senator SPECTER. Well, I am sure you have learned a good lesson.

Mr. HANCOCK. I have.

Senator SPECTER. Thank you, Mr. Chairman.

Senator DENTON. I hope my colleague from Pennsylvania is aware, and I did not mean to insinuate otherwise, that from this Senator's point of view—and I am sure that I can state from anyone else's who is not opposing Mr. Sessions, there was no call from us to remind him or Mr. Hebert of some misrecollection they had. You did not mean to question it?

Senator **Specter**. Not at all, Mr. Chairman. I will testify under oath about your integrity and character and will not change it, whether you call it recanting or whatever. I just think it is an unusual case, if not an extraordinary case to have a man of Mr. Hancock's experience testify under the circumstances without having a firmer recollection on a matter of this sort, and I think it is appropriate to ask a question as to whether there is any triggering factor.

Mr. **Hancock**. Senator Specter, again, you were not here for everything I said before, but I had no intention of offering testimony to this committee. I had received a call from the committee and declined to talk to the committee in part because I did not think that I had anything to offer and, as you know, it is normal practice that lawyers in the department do not get involved in these proceedings.

Senator **Specter**. Well, Mr. Hancock, I would say that in a circumstance of this sort a man would be well advised to say nothing. You are not under any compulsion to speak without having an opportunity to prepare, to review your documents. It is one thing if you are a candidate for office and on election eve they put a television camera in your face, you have to make a statement, for the absence of one is very problemsome. But in your situation you would be well within protocol and your rights to say I need to reflect on it, I need to review some records before I give evidence.

Senator **Denton**. If my colleague will yield for just a moment——

Senator **Heflin**. We have a vote on right now and I have a question or two I want to ask.

Senator **Denton**. Yes; we will hold on. Mr. Hebert also was called under the same conditions of very little notice and much pressure and it was not this side but Senator Biden who requested this unusual opportunity, and both of the gentlemen were under considerable disadvantage and——

Senator **Specter**. Senator, everyone is entitled to an opportunity to prepare, to notice. That is one of the fundamentals of due process.

Senator **Denton**. The point I want to make is Mr. Hebert gave these memories of what had occurred in conversations also has recanted, if that word is acceptable, what he said about that county and Mr. Sessions. He was wrong, and it raises questions in this Senator's belief as to the accuracy of the memory, considering what Mr. Sessions has said about other things which Mr. Hebert accounted to him.

We will have to stand in recess for the vote for 7 minutes, and it will be Senator Heflin's turn to question when we come back.

[Short recess.]

Senator **Denton**. The committee will come to order.

It is Senator Heflin's turn to question. I just want to clarify one point. You have been, Mr. Hancock, emphasizing the rush with which you had to respond to Senator Biden's request that you testify and the contribution that might have made to the failure of your memory. I think it must be asked if you gave the same information to the American Bar Association, with time to meditate and without the urgency necessitated by your testifying to the minority on this?

Mr. HANCOCK. I received a call on a——

Senator DENTON. Can you give me a yes or no on that? I will be happy to hear the qualifications, but did you say the same thing about Conecuh County and Mr. Sessions to the American Bar Association which caused a minority of them to say he was not qualified?

Mr. HANCOCK. Yes, if I can explain.

Senator DENTON. Yes; you may explain.

Mr. HANCOCK. I received a call from a representative of the American Bar Association in regards to Mr. Sessions. I was asked certain questions about Mr. Sessions. I was told that the questions and the answers would be held in confidence, they were not to be revealed, that they were merely information they were requesting from a number of attorneys who had practiced in the southern district of Alabama.

Senator DENTON. Well, why are you emphasizing in confidence, why would that have anything to do with the veracity of your statements?

Mr. HANCOCK. I am not suggesting——

Senator DENTON. I am just trying to save time.

Mr. HANCOCK. I am not suggesting that it has anything to do with the veracity of my statements. The statements were not the kind of statements that were intended to be presented before the Senate Judiciary Committee. I answered questions on the phone without checking records. My recollection is that I was asked if I recalled an incident in Conecuh County involving an FBI investigation, and I said yes, I did, and I confirmed—again, I am not able to say verbatim what they asked me and what I said to them, but it was discussed and, yes, I did say in effect the same thing that I said before.

Senator DENTON. Mr. Sessions has been convicted in the press for not being able to recollect much less important questions and answers than the ones that you are able to recollect now, and I hope the press in all honesty will note that. These were private conversations with Mr. Sessions in offhand conversations that he in all honesty has said he did not remember in every case. This is not an offhand thing we are asking you about, and I just want to emphasize that.

Did you correct it with the American Bar Association as you have with this committee?

Mr. HANCOCK. I would be happy to.

Senator DENTON. Senator Heflin.

Senator HEFLIN. First, let me say that the way the question is phrased that the Senator had that your testimony caused the American Bar Association——

Senator DENTON. Contributed to it, I would have to say, sir.

Senator HEFLIN [continuing]. Do you mean to include within that that your testimony was that important to the American Bar Association?

Mr. HANCOCK. I am not in any——

Senator HEFLIN. Can you evaluate what the American Bar Association decided?

Mr. HANCOCK. Excuse me. I am not in any position to evaluate what the American Bar Association considered to be important.

Senator HEFLIN. How long prior to the giving of the deposition in which you stated your recollections was the American Bar instance in which you discussed it?

Mr. HANCOCK. It was quite a few months ago, Senator. I do not recall the date that I got the phone call.

Senator HEFLIN. Did you do any investigation after you had the telephone call from the American Bar Association inquiring as to whether or not the statement that you had given them was correct or not?

Mr. HANCOCK. I looked in our files for Conecuh County to see whether I could—whether there was any record of the incident. I also discussed it with members of my staff. We did not find any records, but it was the recollection of the people that I talked to that the incident did in fact occur and, based on those conversations, I thought that what I had said was correct.

Senator HEFLIN. That is all.

Senator DENTON. Senator Biden.

Senator BIDEN. I apologize for not being here at the hearing earlier. I thank you, Mr. Hancock, for coming up and correcting the record, and I am ready to hear the rest of the witnesses.

Senator DENTON. You are aware, Senator Biden, that Mr. Hebert also corrected his testimony on this?

Senator BIDEN. On what?

Senator DENTON. On this statement that Mr. Sessions interfered with Conecuh County. It turns out that that recollection was incorrect. Mr. Hebert has said so, as has Mr. Hancock. It was the wrong county and the wrong man.

Senator BIDEN. Well, I think that is obviously useful testimony. Obviously, Mr. Sessions was equally as confused when I asked him about that. He said he did not recall, if you recall, so apparently no one recalls. We are all in the same boat, no one has a good recollection about it. I have plenty of questions for other witnesses. I do not know, quite frankly, I guess instead of just having witnesses here we are suppose to characterize, I guess that is what is happening, at what stage of this proceeding we are at. I am not prepared to characterize at all. All I know is what Mr. Sessions said in the first series of hearings and the admissions and comments he has made about things he recalls having said and not said and, quite bluntly, that is enough for me. But I am prepared to hear all the witnesses and listen to everything said, and I thank you all for being here.

Senator DENTON. Well, I would earnestly implore my colleague whom I respect in these terms: Were I you, and I had read sworn affidavits to the effect of those which you read, I am not sure I would not have handled the previous hearing exactly the way you did.

Senator BIDEN. What does that mean, Jerry?

Senator DENTON. It means that I am now going to ask you to consider what you missed the other day, what you missed earlier today——

Senator **Biden**. I missed nothing the other day. Now——

Senator **Denton**. You stayed for the 9 hours, the whole thing?

Senator **Biden**. I was here with you, Jerry.

Senator **Denton**. OK. Today we are going to hear much more and all I ask is that you stay for today and I wish you had not missed what occurred before now.

Senator **Biden**. I will read the record. I will not be missing what was said today. I had an opportunity to speak with Mr. Sessions at great length and hear him under oath and Mr. Sessions say thing on his own testimony having nothing to do with what anybody else said, just what Mr. Sessions said all by himself.

Senator **Denton**. You said that you were convinced from what he said and what the others said that you concluded that you were convinced that he did interfere in the *Conecuh County* case.

Senator **Biden**. Jerry, I am not the witness——

Senator **Denton**. OK.

Senator **Biden** [continuing]. They are the witnesses.

Senator **Denton**. I am just trying to get at the truth, that is all.

Senator **Biden**. We will get the truth. I am always good at getting the truth, Jerry. Hang on, the hearing is not over. All I am saying to you is that Mr. Sessions has made some interesting statements to me and to the record under oath and there were comments made by others. I am prepared to listen to everyone and those who I do not listen to I will read the record. Let us conduct the hearing. OK?

Thank you, gentlemen. I have no questions unless the Senator wants to make some solilocuy he wishes to engage in. I do not.

Senator **Denton**. I cannot compete with you in soliloquies.

Senator **Biden**. I think you are probably right, Senator, so why do we not move on? [Laughter.]

Senator **Denton**. You are famous for them.

Mr. Kowalski, do you have a statement of any kind?

Mr. **Hancock**. May I be excused, Mr. Chairman?

Senator **Denton**. Yes; you may, Mr. Hancock. Thank you.

Mr. **Kowalski**. Mr. Chairman, I am deputy chief of the Criminal Section of the Civil Rights Division and was asked——

Senator **Denton**. Would you put the mike directly in front of your mouth, please?

Mr. **Kowalski**. Yes, Mr. Chairman. I will be happy to put the mike anywhere the Senators want me to.

Senator **Biden**. That is a dangerous commitment to make.

Mr. **Kowalski**. I was asked yesterday to come to the committee staff and to answer questions regarding my contacts with Mr. Sessions throughout an investigation that I was involved in as a trial lawyer from the Department of Justice, Criminal Section, Civil Rights Division, and that was the Michael Donald investigation, a young man, a black man who was found hung in Mobile, AL, in 1981. I answered questions yesterday for the staff regarding my involvement in that investigation as well as Mr. Sessions' involvement and my working with Mr. Sessions. I am prepared to answer any questions about that matter that the committee may have.

Senator **Denton**. Is that the—in what capacity have you worked with Mr. Sessions and over what period of time?

Mr. **Kowalski**. Well, sir, I joined the Department of Justice in 1980 as a trial attorney with the criminal section. We investigate criminal civil rights violations in conjunction with the U.S. attorneys office.

In 1981, a young black man named Michael Donald was found hanging from a tree in Mobile, AL. Approximately 2 years later, after a Federal Bureau of Investigation investigation was conducted, I began to work on the case in an investigative grand jury with Mr. Albert Glenn who is seated to my left. We worked in conjunction with Mr. Sessions' U.S. attorneys office and during that approximately 4-month period of the investigation when I was in Mobile, AL, working on the case, I had frequent contact with Mr. Sessions in regard to that case.

Senator **Denton**. Was it your perception during that time that Mr. Sessions was cooperative or uncooperative?

Mr. **Kowalski**. He was very supportive of our efforts to determine which individuals were responsible for the killing of Michael Donald and entirely supportive of our efforts to prosecute those individuals once we identified them.

Senator **Denton**. Mr. Kowalski, is it true you were involved with the decision to go forward with the grand jury investigation in the Donald case?

Mr. **Kowalski**. Yes, sir; I was to this extent: I had been talking for several months with one of the assistant U.S. attorneys working for Mr. Sessions about what we should do with that case. He and I concluded that a grand jury was the most appropriate step to take.

I discussed the matter with my boss, the chief of the section, Daniel Rinzel, who made the decision for the Department whether to go forward in the grand jury, and it is my understanding that Mr. Figures discussed the matter with Mr. Sessions, and our bosses respectively ultimately made the decision on the grand jury.

Senator **Denton**. Did Mr. Figures ever intimate to you that Mr. Sessions was in any way reluctant to proceed with the investigation of the Michael Donald lynching?

Mr. **Kowalski**. No, not expressly, Mr. Chairman. Mr. Figures and I discussed the need for both of us to talk with our respective bosses to convince them that a grand jury was necessary. He did not say anything to me which I recollect that indicated he was going to have any difficulty convincing Mr. Sessions of the need for a grand jury investigation. I subsequently learned from Mr. Dan Rinzel, my boss, that when he contacted Mr. Sessions on the telephone to discuss whether or not a grand jury was appropriate, that Mr. Sessions voluntarily stated to Mr. Rinzel that he thought a grand jury would be a good idea. I was not privy to that conversation, however I heard this from Mr. Rinzel.

Senator **Denton**. If the State prosecution of the *Michael Donald* case had not resulted in a conviction, from your knowledge was Mr. Sessions prepared to go forward with the Federal prosecution of Henry Hayes?

Mr. **Kowalski**. Yes; Senator, I believe we were prepared to do that. We were hopeful, of course, that the State prosecution would be successful. They had the better statute under the factual situation than we had, but I believe all of us working on the case, including Mr. Sessions, recognized the possibility that the Federal

Government might have to try the case as a Federal violation and we are prepared to do so.

Senator **DENTON**. Sir, the gravity of this issue pretty much rests on the kind of answer to the next question. Have you reached any conclusion with regard to Mr. Sessions' overall attitude and competence toward civil rights cases in general?

Mr. **KOWALSKI**. I would state that my view is based upon my contact with him exclusively in this particular case, and during the course of this case I became convinced that he was dedicated to this criminal civil rights prosecution, that he was eager to see that justice was done in the area of criminal civil rights prosecutions, and I have no reservations at all whatsoever about his dedication to that proposition based on my experience with him.

Senator **DENTON**. Have you ever heard him make a racial comment which offended you or which you believe suggested that he was insensitive on matters of race?

Mr. **KOWALSKI**. No, sir; not something that offended me. However, I did hear a comment which others have been offended by, and I would describe that now, if the Senator wants me to.

During the course of the investigation, Mr. Sessions and I were discussing some of the problems in the evidence, and my recollection is that I mentioned to him that we were having difficulty learning exactly what happened at the house where a number of Klansmen were, two of whom were later proven to be involved in the murder, and I mentioned to him that one of the problems was that some of the Klansmen had been smoking marijuana that night and they were having difficulty with their recollection of events.

Mr. Sessions replied to that, something to the effect of, "I didn't know that Klansmen used marijuana now," and I replied that they did in this case. To that, he responded, as I recollect, that he used to have respect for that organization but now he no longer does, knowing that they use drugs. In the context I considered it to be a joke that he was making at the time.

When working on a case such as this one, a brutal murder and a hanging, those that work on it sometimes do resort to operating room humor and that is what I considered it to be at the time.

Senator **DENTON**. Sort of like gallows humor?

Mr. **KOWALSKI**. I would not use that term in this case, Mr. Chairman.

Senator **DENTON**. In your view, is there anything that you know about Mr. Sessions personally or professionally that would disqualify him for appointment as a judge for the U.S. District Court of the Southern District of Alabama?

Mr. **KOWALSKI**. There is nothing that I am aware of in that regard, sir.

Senator **DENTON**. I guess I should go in seniority now. Senator Biden.

Senator **BIDEN**. No questions.

Senator **DENTON**. Senator Heflin.

Senator **HEFLIN**. Mr. Kowalski, you have made a statement here on the issue of the Klan—and, as I gather, it is a two-part statement. If you would recite that again to me, so that I clearly understand it. What brought on the issue of saying that he used to think that the Klan was a good organization until he learned that they smoked pot or smoked marijuana, some words to that effect? The way you have recited it is a little bit different from what we have heard previously, and I want to make sure the record is clear—how do you recall it?

Mr. **Kowalski**. Senator, one thing I have learned out of this experience after years of being a prosecutor is it is a lot harder to remember things than I thought it was.

My recollection is that in a conversation in which I was discussing the evidence in the case with Mr. Sessions, I related to him that we are having difficulty with some of the Klan witnesses because they had been smoking marijuana that night, to which he responded that he used to have respect for that organization but did not any longer, knowing that they smoked pot.

Senator **Heflin**. Now, was Mr. Thomas Figures present at the time that this was stated?

Mr. **Kowalski**. I am not sure whether he was or was not.

Senator **Heflin**. It has been characterized here that to make a statement like that in the presence of a black man indicated an insensitivity to the gravity of the circumstances. I ask you again, do you know whether Mr. Figures was present?

Mr. **Kowalski**. My best recollection is that Mr. Figures was not present. However, I have heard from others that others recollect him being present. I am not certain whether he was present or not.

Senator **Heflin**. Did you repeat this statement to people?

Mr. **Kowalski**. I recollect talking about this statement of Mr. Sessions both to Mr. Figures and to Mr. Glenn and possibly to others, but specifically those two.

Senator **Heflin**. How many different conversations totally did you have about it?

Mr. **Kowalski**. I really do not remember, Senator.

Senator **Heflin**. Would it have been more than three or four?

Mr. **Kowalski**. It could have been. Again, my perception of the statement was that it was made in a humorous vein and when I related it, I related it as a story in a humorous vein as well. I am not certain how many times I may have related it to others.

Senator **Heflin**. That is all.

Senator **Denton**. Mr. Kowalski, was Mr. Figures offended by the remark, to your belief?

Mr. **Kowalski**. Well, it is difficult for me to know for certain how someone feels about something. I do have a recollection that Mr. Figures gave some body language, that he may have been offended when we discussed that remark. Again, I do not remember him being present when the remark was said, however, I do remember talking about the remark with him, and I am not sure whether he was offended or not.

Senator **Denton**. Well, I am told—and you will have to affirm or not—that Mr. Figures gave you a cartoon under which he wrote some words, and I do not know whether this is true. Mr. Figures is here and will be able to testify and you will be able to testify also. I will describe the cartoon and then let the cameras and the people see it, and we have some to pass out.

The cartoon shows sort of a shack-like house, it looks like one room, and in the doorway is standing a Klansman, and out in front of the porch, which is very rickety, is standing another klansman, and there is a sign in front of the building which says "HGQ"—which I presume is "headquarters"—then there is a sign under that which looks like it might be some kind of a Klan sign, and under that the words "First Battalion," and there is a tattered Confederate flag flying over the portico and a little dog wagging his tail on the front of the porch, and the klansman standing on the ground is saying to the klansman in the doorway, "But I ain't lying, Rufus, President Reagan appointed me to the Civil Rights Commission," and under that cartoon I am told that Mr. Figures wrote, "Good choice if he doesn't use drugs, don't you think?" And this is a cartoon from the Anniston Star, Wednesday, June 1, 1983, and I will hold it up. Here it is.

Is what I said true?

Mr. **Kowalski**. Well, Senator, I received in the mail a copy of that cartoon with the words you just quoted written underneath it. I did not save the envelope. I am not certain if the envelope had a return address on it, at this time I just do not recollect it. My recollection is at the time I assumed that this cartoon came from Thomas Figures because he and I were working closely together on the case and I did not know of anyone else who knew of Mr. Sessions' comment outside of Washington, so I cannot say for certain that Mr. Figures sent this to me, but I assumed he did at the time.

Senator **Denton**. Well, it seems that there are those who would try to continue to make something out of this in the way of a condemnation of Mr. Sessions. I have heard and read a number of papers opposed to Mr. Sessions who agree that he said that in irony and that they do not hold it against him. I can say that from rather grim circumstances in one of my most difficult experiences over a number of years that there were all kinds of gallows-type jokes made under some very real, deadly, and agonizing circumstances involving both blacks and whites on any subject, and about the only way we could keep our sense of humor and so on, but I just wonder if we are to continue to regard what I believe Mr. Figures made a joke of as something impermissible in irony on the part of Mr. Sessions.

I think he has been said to have been eager to prosecute and I do not see how one can assign to him any sincerity with respect to what you and others took to be a joke.

Mr. **Kowalski**. I agree with you, Mr. Chairman. My perception of all the surrounding circumstances of how those words were said was that it clearly was intended as humor.

Senator **Denton**. Go ahead, Senator Heflin.

Senator **Heflin**. You mentioned about this envelope you received it in and you mentioned conversations in which you had repeated this incident, but you did not remember the number of occasions. You mentioned a Mr. Glenn. Was Mr. Glenn in Mobile or was he in Washington?

Mr. **Kowalski**. Mr. Glenn is here today in Washington. He was the other attorney from the criminal section that was working with me on the case. He is stationed in Washington but we were working together in Mobile, Senator.

Senator **Heflin**. Thank you.

Senator DENTON. All right, I have no further questions for you, sir. I will ask Mr. Glenn in what capacity you have worked with Mr. Sessions. I thank you, Mr. Kowalski.

Mr. GLENN. Mr. Chairman, I also, as did Mr. Kowalski, worked with Mr. Sessions in the investigation of the circumstances surrounding the death of Michael Donald. This investigation began in May—I was assigned to it in March 1983. The investigation itself began in May 1983.

We conducted investigative sessions in Mobile in May, in late May and June, July and August 1983, and January and April 1984. I was in Mobile not for investigation but for related matters in December 1983 and April 1985 and again in February of this year. All during this period of time, whenever I was in Mobile on this investigation, of course, Mr. Sessions was consulted and we worked with him closely throughout the investigation.

Senator DENTON. In the course of that investigation, did you become aware of that joke or comment about the Klu Klux Klan? That would have been about 2 years ago. And if so, what was your impression of the remark by Mr. Sessions?

Mr. GLENN. Mr. Chairman, I am not entirely sure that I was present for that remark. I think I was. I cannot be sure that I heard it or that I heard it told to me by Mr. Kowalski. I do have this vision of being in Mr. Sessions' office, of him reading a report or something in the report of some comment with respect to that report having to do with drugs involved with the Klan, and something was said about the drugs and Mr. Sessions made some comment about, "I used to have some respect for those guys." I took it wholly as a joke and humor. It never occurred to me that there was any seriousness to it. There was no question in my mind at the time that it was meant humorously.

Senator DENTON. Do you remember whether Mr. Figures was present or not?

Mr. GLENN. I do not know for sure. I believe he was, but I really do not know for sure.

Senator DENTON. If your memory is hazy, then you probably could not answer what his reaction appeared to be to you.

Mr. GLENN. No, sir.

Senator DENTON. Did you have any memory of anyone being offended by the joke at the time you heard it?

Mr. GLENN. No, sir.

Senator DENTON. Have you had any discussions with anyone else about this joke apart from committee investigators, the statement about the Klan by Mr. Sessions?

Mr. GLENN. Other than Mr. Kowalski, no, sir.

Senator DENTON. How would you characterize Mr. Sessions' cooperation in the Michael Donald lynching case as to being fully cooperative or less than cooperative?

Mr. GLENN. In all my contacts with him during the entire course of the investigation he has provided unqualified support and cooperation to us and independently as an individual who absolutely wanted to see that crime solved and prosecuted.

Senator DENTON. Did you observe any dissatisfaction expressed or evidence on Mr. Figures' part on the way that the Donald investigation progressed or was resolved?

Mr. **Glenn**. With respect to any particular part of it?

Senator **Denton**. Mr. Figures, did he show you any dissatisfaction with the way the Donald investigation progressed or was resolved?

Mr. **Glenn**. I do not recall explicit comments as to any specific point. I know that during the course of the investigation, after the two principal co-conspirators had pleaded guilty or had been convicted, we continued to investigate other individuals to see if they had any Federal culpability, and Mr. Figures was always concerned that we were very careful to look at those individuals. However, I never heard him specifically cite any individual as obstructing, or being dissatisfied with the decisions of any individual with respect to the investigation.

Senator **Denton**. In your opinion, did Mr. Sessions manifest an egotistical effort to improperly claim credit for the Donald case?

Mr. **Glenn**. No, I have no knowledge of that, Mr. Chairman. He is a person who is easy to approach, easy to discuss matters with, to raise ideas with, and it is particularly easy to discuss these matters with him. He is not a person who is inclined to have an egotistical approach to matters in my experience with him.

Senator **Denton**. Thank you, Mr. Glenn.

Senator Heflin.

Senator **Heflin**. You basically testify you do not know whether you heard Mr. Sessions make this remark or whether or not it was a parroting situation in which someone was telling you that Mr. Sessions had made the remark about the Klan and the pot? Is that your testimony?

Mr. **Glenn**. That is correct, I am not absolutely sure that I was there or whether I heard it.

Senator **Heflin**. And you are not sure whether Mr. Figures was there or not?

Mr. **Glenn**. If in fact I was present, the circumstances would have been one in which he was present as well. It would have been a gathering in Mr. Sessions' office to discuss the day's course of the investigation.

Senator **Heflin**. How long would it have been after the man had been found hanging from the tree that this was brought to your attention?

Mr. **Glenn**. Our investigation began approximately——

Senator **Heflin**. I mean the remark.

Mr. **Glenn**. I understand, sir. Our investigation began approximately 2 years after the incident itself, which was in March 1981. I do not know precisely at what point during the May to July period—and I imagine it was during that period that the remark happened—I do not know exactly what part of that period it was, but it would have been approximately a little over 2 years after the incident.

Senator **Heflin**. Have you repeated the remark to some other people?

Mr. **Glenn**. I do not believe so, sir.

Senator **Heflin**. Your interpretation of it was that it was a joke?

Mr. **Glenn**. Yes, sir.

Senator HEFLIN. It was told to you by someone else, rather than Mr. Sessions. I suppose it would depend upon the method of presentation as to whether it was a joke or was not.

Mr. GLENN. It would be my interpretation of what they told me, that is correct.

Senator HEFLIN. Thank you.

Senator DENTON. Thank you, Mr. Glenn.

Mr. Bell, do you have any statement to make?

Mr. BELL. No; Mr. Chairman, I do not.

Senator DENTON. Are you a colleague of Barry Kowalski's in the Civil Rights Division?

Mr. BELL. Yes, sir; I am also one of the Deputy Chiefs in the Criminal Section.

Senator DENTON. How long have you known Jeff Sessions?

Mr. BELL. I have known Mr. Sessions since about 1978, when I was first assigned to work on a criminal civil rights prosecution in Mobile.

Senator DENTON. And would you describe the manner and timeframe over which you had contact with him?

Mr. BELL. Yes, sir. Another attorney from the Criminal Section and I were both assigned to the prosecution of the case in Mobile. It was a case involving the alleged murder of a black inmate in the county jail by the sheriffs department. As you can imagine, it was a very controversial and very sensitive case, having racial overtones. It was a case that was not very popular at all in Mobile.

When we got to Mobile, we got a great deal of support from the U.S. attorney at the time, Mr. Whitespunner, and then from his successor, Mr. Kimbrough. It was also necessary for us to consult with assistant U.S. attorneys who, even though they were not assigned to the case, would be able to help us with tactical problems, with knowledge of the local rules and mores and so on. In that connection, we both felt free to consult Mr. Sessions frequently and that is how I first came to know him.

Mr. Sessions was very cooperative with us. Although this case was no direct concern of his, he manifested the desire to have justice done and in general we found him extremely cooperative in that situation. Since then I have had a number of dealings with him on the telephone concerning other investigations that have been handled by our office and I have always found him to be very cooperative, very interested in getting investigations done properly, and indeed he has that reputation, I believe it is fair to say, among the attorneys in our office.

Senator DENTON. Would you say that again, please, sir, the last part? There was a lot of conversation and I could not hear what you said.

Mr. BELL. Yes, sir. I was saying that I have had occasion to deal with Mr. Sessions myself on the telephone concerning many investigations, criminal civil rights investigations, and he has always expressed a desire to have those investigations done properly and done thoroughly. He has always been very cooperative with our office. And I also said that it is my belief that his reputation among the attorneys in our office for being cooperative and professional in his approach to criminal civil rights matters is very high.

Senator Denton. Is it true—and if you cannot speak for the others, then I ask them to speak for themselves and for the absent attorneys—is it true that you gentlemen are not political appointees, you are career Justice Department attorneys?

Mr. Bell. I think it is fair to say, Mr. Chairman, that all three of us are career attorneys.

Senator Denton. How long have you been serving, for example—how long did Mr. Keeney serve, does anyone know?

Mr. Bell. I do not, Mr. Chairman.

Senator Denton. All right. My staff director, Mr. Lister, informs me that he is aware that he has served since the Eisenhower administration.

Mr. Bell, have you ever observed Mr. Sessions to be racially insensitive by word or by deed?

Mr. Bell. No; I have not. As a matter of fact, Mr. Sessions has always impressed me as being a very moral kind of person.

Senator Denton. I note the arrival of first my colleague from Illinois and my colleague from Massachusetts. I will recognize—I guess I should say to Senator Kennedy and Senator Simon that this morning so far we have heard—this panel consisted of Mr. Hancock, who changed the testimony he had written and given to the American Bar Association and to the minority staff person asking him questions regarding the involvement or complicity and conspiracy of Mr. Sessions to interrupt the *Conecuh County* case. It turns out it was Clarke County and another attorney that was involved, another U.S. attorney.

We have been hearing from a panel of career Justice attorneys who have, without exception, having dealt with Mr. Sessions in civil rights cases, accredited him with good performance and attitude and so on. Prior to that, we had an attorney who was involved in Perry County, a professor who had to go, Professor Liebman, who said that Mr. Sessions had in his opinion not handled himself well in the *Perry County* case and gave what he considered to be evidence to support that, and that is about where we are.

I think Senator Simon having arrived first, should have the first chance.

Senator Simon. I yield to my colleague.

Senator Kennedy. I thank Senator Simon and the Chair. I want to explain my absence. We had the markup of the higher education bill in the Human Resources Committee, where I am the ranking member, and the Home Services for Children Act, both of which we passed out of the Human Resources Committee about 2 minutes ago, so I was necessarily absent.

I just want to make a very brief comment and then I will look forward to having an opportunity to read the record. I understand while I was attending the full committee markup at Labor and Human Resources this morning, that you, Senator Denton, twice stated publicly and on the record that I have no problems with the Jefferson County prosecution.

Let me state for the record, as I stated at the hearing last week, that I find the Perry County prosecution very, very troublesome. All three of the defendants in the *Perry County* case, well known and highly respected civil rights leaders, were acquitted of all charges. Some of the elderly black voters involved in the investigation avowed never to vote again, and that is tragic.

Yesterday Senator Denton asked me what bothered me most about Mr. Sessions and I responded that, although I am troubled by the Perry County prosecution, I am most concerned about the racist remark which Mr. Sessions acknowledged he made. I felt compelled to make that statement.

Senator **Denton**. I feel that I should respond, Senator Kennedy. I certainly did not mean to misquote you. I do not have the same memory. My memory is that you said that—and I do not think this is contradiction, it is a matter of——

Senator **Kennedy**. Well, I can tell you what I think, Mr. Chairman.

Senator **Denton**. May I please state what I said? I did not say what you said I did. I said that you said that you did not have a problem with his having brought the thing to trial, and that was what I understood you to have said in the cloak room, and I thought I was doing you a justice, a favor.

Senator **Kennedy**. I would go with my comments and statements, Mr. Chairman, of what I said at the start of the hearing and what I said right now. It is an accurate portrayal of my position.

Senator **Denton**. Well, if I had known you were going to contradict me or that I had said it wrong, I certainly would not have. My memory, as I say, is different from yours.

Senator Simon.

Senator **Simon**. Thank you, Mr. Chairman. I was with Senator Kennedy in the Labor and Human Resources markup, so I also got in on the tail-end of your testimony and I apologize. You have heard the testimony concerning Session's references to the NAACP and the American Civil Liberties Union as un-American, pinko, communistic. Do these comments, in your opinion, represent the thoughts of someone who is racially sensitive?

Mr. **Bell**. Senator, I would have to agree that statements that are made to be taken seriously of that nature would tend to reflect racial insensitivity. I have never myself heard Mr. Sessions make any such remarks. As a matter of fact, my experience with him is that he does not make racial jokes or insensitive jokes. And if I were to judge other remarks that he may have made, I would want to know exactly what they were and what context they were in. Certainly, they could be racist, but I do not know that I am in a position to judge that.

Senator **Simon**. Are there any comments from the other two witnesses?

Mr. **Kowalski**. I would agree with Mr. Bell, Senator, that in my experience with Mr. Sessions, he demonstrated unequivocal commitment to the prosecution of criminal civil rights cases and showed sensitivity to those kinds of cases. The Michael Donald case, which we discussed before the Senator arrived, was a particularly brutal murder that required a great deal of his attention and his commitment to bring a prosecution when the local government had failed to bring a prosecution, and he unequivocally supported that prosecutive effort and demonstrated to both myself and Mr.

Glenn, who also worked on the case, his commitment to criminal civil rights prosecutions.

Senator SIMON. Thank you.

Mr. GLENN. I would concur with Mr. Kowalski. In my experiences with Mr. Sessions, nothing I have ever heard him say leads me to believe that he has any racial insensitivity. I did hear his responses to those allegations here last Thursday and I take his responses and, hearing those, in light of the remarks as I understood him to explain them, there is no racial insensitivity there either, in my opinion.

Senator SIMON. I have no further questions, Mr. Chairman.

Senator DENTON. Senator Simon, besides Senator Heflin, you are the only Democrat here to hear that. I must say that Senator Biden said he would remain for the rest of this. I hope that his staff and Senator Kennedy's will relay on such information as Senator Kennedy seems to need. He says he now has problems and had problems with the bringing of the trial and I hope you are quoting to him the 600 absentee ballots out of 6,800—what was the exact figure—700 absentee ballots, about a tenth, as opposed to in that election in 1984. In 1982 there were a thousand absentee ballots as compared to 250 out of 250,000 in Jefferson County.

I am perfectly willing to join battle and keep the battle going until we find out, ascertain at least to the efficacy of all the members who are not going to hear any of this, so we are left to rely on whether the press chooses to comment on this testimony being given today, rather than the testimony that was given at the last hearing or the inferences drawn from it, and I just hope that we do get justice out of this.

I thank the panel and——

Senato HEFLIN. I would like to ask Mr. Kowalski a couple more questions on this remark about the Klan and the fact that they were smoking pot. Now, as I understand it, to get it back into the proper setting of the remark to you, you were telling him you were having some difficulty with witnesses or with Klansmen I suppose who had talked, as to those Klansmen recalling what went on at a house because they had been smoking marijuana.

Now, at the time that you told Mr. Sessions that, had he been previously informed of this or was this new information to him?

Mr. KOWALSKI. My best recollection is that I was telling him that information for the first time. The context in which I raised it, as I recollect now in my mind, was I also thought it was humorous that Klansmen had now begun to use drugs, and I mentioned it as a part of the discussion of the case as a whole in that fashion, and my recollection, to answer your question, was that Mr. Sessions heard it for the first time from me.

Senator HEFLIN. Now, I suppose you had investigators, the FBI supposedly, who had been interviewing the various members of the Klan, including members of the Klan who probably were not involved in the actual murder, and trying to reconstruct what went on and the circumstances, and you were expressing to Mr. Sessions for the first time that you were having difficulty getting all of the factual situation of what occurred in the house relative to conversations because some of the Klansmen had been smoking marijuana, and his response, as has been given, followed that information.

Mr. KOWALSKI. Yes, sir; it did. I would amplify one thing just for the Senator's information. I believe on other occasions I had told Mr. Sessions about difficulties getting evidence from these particular individuals. In fact, they initially had lied to the FBI when interviewed, so there was other circumstances beyond the smoking of marijuana that contributed to the difficulty of getting complete and truthful answers from the people we were investigating and interviewing.

Senator HEFLIN. Do you consider Mr. Sessions a joke teller?

Mr. KOWALSKI. No, sir, not particularly. On the other hand, I believe he does have a sense of humor. I do not think he utilizes it an inordinate amount of time, but he does joke on occasion.

Senator HEFLIN. That is all.

Senator DENTON. Before we thank and dismiss the panel, Mr. Glenn, you said something a moment ago which I agree with but it is terribly important. You said that you were here for the other hearing, you heard what was said back and forth about the racial remarks attributed to Jeff Sessions and that you did not in reaction to the entirety of those testimonies find his remarks to have been racial or worthy of being considered that. Is that correct?

Mr. GLENN. I was responding particularly to Senator Simon's question concerning remarks regarding organizations to be un-American or otherwise and, after hearing Mr. Sessions' explanation last Thursday, I believe Mr. Sessions and I understood what I thought he was saying and I do not consider that to be a racist comment.

Senator DENTON. I totally agree and that is the most frustrating part of this hearing, second to my regret that I am not a lawyer. I am doing my best, but the newspaper accounts, television accounts showing the allegations being made, as if final, and not tempered by what Mr. Sessions' testimony and testimony of others was has shocked a large number of very well-meaning Americans in that they have assumed that all he did was criticize as un-American, anti-American, Communist-inspired the ACLU and the NAACP. It is simply not true, and the reason I am bringing this up is we have in the next panel which will be testifying principally against Mr. Sessions a very distinguished protagonist of civil rights, a distinguished American by any standards, the Honorable Arthur Flemming, who was the president and chairman of the Citizens Commission on Civil Rights, in Washington, DC, under the Eisenhower administration.

He is shocked by what he has read because he was not at this hearing and he is going to testify that way and in other ways that I am not aware of. But I ask that he take note that Mr. Glenn has said that, at least for what it is worth that is also my belief and I think it is the belief of many Alabamians from the many telegrams we have received from black and white persons about that, as well as if you will stay for the subsequent panel, and I hope you have been here a while, sir.

What testimonies you receive about Mr. Sessions from many others who were involved, black and white, in the *Perry County* case.

I thank the panel. Senator Simon.

Senator **Simon**. If I could just follow up with one question, Mr Glenn. You will recall that Mr. Hebert was brought up as a witness and Senator Biden asked Mr. Hebert, if he were an attorney who had a client that happened to be black, would he want to have Judge Sessions as the presiding judge. Mr. Hebert said he would not. You are an attorney, I assume, Mr. Glenn?

Mr. **Glenn**. I am.

Senator **Simon**. I ask you the same question. If you had a client who was black and you had a choice of courts you would you want to appear before Judge Sessions?

Mr. **Glenn**. Knowing what I know about Mr. Sessions and having worked with him, I would not hesitate to go before Judge Sessions.

Senator **Simon**. Thank you, Mr. Chairman.

Senator **Denton**. I thank you, Senator Simon, because I have been criticized for having Mr. Hebert sit there and testify and knowing that he was going to say some of the things he did. I did so because I thought we should get at the truth. That was Mr. Hebert's opinion, which is not quite the same as Mr. Glenn. We have had a total of six attorneys from the Department of Justice. Only one was chosen. He has recanted part of his testimony. I think in all fairness we should ask the other two who are sitting here, since Senator Simon was kind enough to ask that question, which I think is a very fair one, whether the other two would care to respond to that question.

Mr. **Bell**. Well, Senator, if I may first, I would be happy to appear in Judge Sessions' court under any circumstances I can conceive.

Senator **Denton**. He asked if you were black, would you feel that—if your client were black, would you feel that he was under a disadvantage?

Mr. **Bell**. As I say, I would be happy to appear in his court.

Senator **Denton**. Sir?

Mr. **Kowalski**. I would begin by stating that before working for the Department of Justice I was an attorney and professor with the Antioch School of Law where I represented many black indigent clients. I would have no reservation about appearing with a black client or any other client before Judge Sessions, were he sitting on the District Court.

Senator **Denton**. Any other questions?

[No response.]

Senator **Denton**. I thank the panel.

Mr. **Bell**. Mr. Chairman, may we be excused?

Senator **Denton**. You are excused.

Panel No. 2, as I call their names, I request that they come forward and remain standing to be sworn: The Honorable Clarence Mitchell, Maryland State senator, for the National Black Caucus of State Legislators, Washington, DC; the Honorable Arthur Flemming, chairman, Citizens Commission on Civil Rights, Washington, DC; and Robert Turner, attorney, Chestnut, Sanders, Sanders, Turner & Williams, of Marion, AL; Dr. Robert Gilliard, president, National Association for the Advancement of Colored People, Mobile, AL, branch.

We have had many surprises about who was coming and who was not. There were a lot of cancellations and a lot of additions. There are only two of the four I—oh, I am sorry, three of the four I called. Apparently State Senator Mitchell is the one that is absent.

If you gentlemen, please, would raise your right hands. Dr. Gilliard, excuse me, would you raise your right hand, sir? Do you swear that the testimony you will give before this hearing today will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Flemming**. I do.

Mr. **Turner**. I do.

Mr. **Gilliard**. I do.

Senator **Denton**. Please be seated.

I had Mitchell, Flemming, Turner, and Gilliard in that order. I do not know why, but I will accede to the way it was presented to me, so Mr. Flemming will be the first, Hon. Arthur Flemming, chairman, Citizens Commission on Civil Rights, Washington, DC. Welcome.

TESTIMONY OF ARTHUR FLEMMING, CHAIRMAN, CITIZENS COMMISSION ON CIVIL RIGHTS; ROBERT TURNER, ESQ., CHESTNUT, SANDERS, SANDERS, TURNER & WILLIAMS, MARION, AL; AND ROBERT W. GILLIARD, PRESIDENT, MOBILE, AL, BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; ACCOMPANIED BY ALTHEA T.L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NAACP

Mr. **Flemming**. Senator Denton and members of the committee, first of all I appreciate very much having the opportunity of once again appearing before this committee.

In order that you will understand where I am coming from as far as my testimony is concerned, I will state that I have had the opportunity of serving in the Federal Government——

Senator **Denton**. Sir, could you put the mike a little closer to your mouth? Thank you.

Mr. **Flemming**. I have had the opportunity of serving in the Federal Government as a member of the U.S. Civil Service Commission over a period of 9 years. In President Eisenhower's first term, I served in his Cabinet as Director of Defense Mobilization and in that capacity also served as a member of the National Security Council. In the second term, I served as Secretary of Health, Education, and Welfare.

Since then I have had the opportunity of serving as U.S. Commissioner on Aging, and from 1974 to 1982 as Chairman of the U.S. Commission on Civil Rights.

I think I should address myself first of all to the comments that you have made, Mr. Chairman. I appreciate your comments relvative to my concern for issues in the field of civil rights. You are correct in your assumption that I did read about the testimony that was presented to this committee and I was shocked.

I understood that earlier in the hearing today you expressed the point of view that you expressed just a few minutes ago, and I have listened to some of your colleagues react to that comment. So I understand that the question of whether or not the comments were made is an issue before the committee.

Senator **Denton**. In the context in which they were originally printed.

Mr. **Flemming**. That becomes an issue and you are now in the process of taking testimony on both sides of that issue. You and some other members of the committee have reached tentative conclusions on the basis of the evidence that has been presented up to the present time.

My testimony will proceed on the assumption that the statements were made and were made in the context reported. That is the only way in which I can be of help. I recognize the process that the committee is now going through. I cannot help as far as that particular process is concerned.

As a result of the experiences that it has been my privilege to have in the executive branch of the Federal Government, I have developed great respect for our system of government. I have great respect for our system of checks and balances. I am seeing it operate right now. The President has nominated and this committee of the Senate is now giving consideration to a nomination made by the President of the United States. I have developed tremendous respect for the role of the judiciary under our system of government.

Our people, it seems to me, must believe that Federal judges will decide cases in an unbiased manner, and I am sure we all agree on that. As I had the opportunity of serving in President Eisenhower's administration, I was very much impressed with the way in which he went about the selection of persons to serve on the Federal bench. He was assisted, of course, in the first term by Herbert Brownell, the Attorney General, and then later in his second term by William Rogers who followed Mr. Brownell as Attorney General.

I watched particularly the process that Attorney General Brownell followed, the process that had the complete backing of President Eisenhower. President Eisenhower operated in such a way that the Cabinet was a collegial body, we did as a body discuss issues of this kind and we were aware of what was going on, not just in our own departments but what was going on in other departments.

I feel that one of the finest contributions made by President Eisenhower was the type of persons that he nominated for service in our Federal judiciary. I am a hero worshiper, really, for example, of one person coming from your State, Mr. Chairman, namely Judge Frank Johnson who was selected for a Federal judgeship at that particular time.

I feel that President Eisenhower, aided and assisted by Attorney General Brownell and also Attorney General Rogers, kept before him at all times the absolute importance of nominating to the Senate persons who would have the confidence of the people of this Nation from the standpoint of their commitment to dealing with the cases that would come before them in an unbiased manner.

Now, that is why I was shocked by the comments by Mr. Sessions that were presented to this committee in the first hearing that this committee held on his nomination for a U.S. District Court judgeship.

I personally believe that if a person who has reached the conclusions attributed to Mr. Sessions, should become a Federal judge—here again, I am assuming the accuracy of the testimony that was presented—many of our people would assume that he would have a biased point of view in any cases involving these organizations, members of these organizations, or issues with which these organizations deal, namely issues relating oftentimes to the first amendment or to the thirteenth, fourteenth and fifteenth amendments.

I recognize that I have not identified the organizations, but you did identify them in your comments, namely the NAACP, the ACLU, the National Council of Churches, the Southern Leadership Christian Conference, and PUSH.

The statements, it seems to me, are so extreme that this assumption is bias that I talked about would persist, and that the situation that would confront the Senate as a result of these statements by the nominee would have to be looked upon as irretrievable.

Now, I appreciate the fact that people go through an evolution in terms of views on some matters. Our society gives them a chance to operate in accordance with their change in views. I do not think however, that in the area of racial bias we should give them the opportunity of having a lifetime appointment on the Federal judiciary.

I called attention to the fact that I was a member of the U.S. Civil Service Commission from 1939 to 1948. You recognize that I was serving during the World War II and the post-World War II period, including my service in the Eisenhower administration.

We saw during that period what can happen in our Nation if we start to question the loyalty of the people who disagree with us. It stifles the vital debate that is at the core of the Democratic process. Unchecked, it seems to me, it can breed unwarranted fears and hatred and an atmosphere in which innocent individuals are deemed guilty solely because of the groups to which they belong. Guilt by association was rampant during the war period and the postwar period and on into the fifties. No one should serve as a Federal judge who has shown a willingness to embrace this approach.

Enforcement of the first amendment, for example, requires a crystal-clear understanding that those who advance progressive, conservative, or even what some people at some points may regard as eccentric positions are not for that reason un-American. No person, it seems to me, should serve as a judge or I feel in any other Federal position who confuses disagreement with his personal political views with disloyalty to the U.S. Government.

Mr. Chairman, I appreciate very much having the opportunity of presenting my views to you and to the other members of the committee. I hope that as you weigh the evidence that you will weigh these views along with others that will be presented to you.

Senator DENTON. We will, sir. I cannot say that I disagree with one word that you said. I think perhaps you would agree if the mere allegation printed without contextual reference to the testimony should justifiably wreck a man's reputation or hurt his career. When I saw the prepared material which I referred to as a rag in the opening hearing, after I looked into it as to what Jeff Sessions himself had to say about those remarks and then saw the way I think some journalists simply did not stay for the whole hearing, reported the thing, it was I knew going to become a tragedy in that the same assumptions would be drawn by others who read the articles. I am hoping that there will be some correction to the context.

If I hear things in this hearing which are convincing to me, I have not made up my mind. A hearing is a hearing. The only thing I am against is drawing inferences from incorrect allegations which I know to be incorrect. I just think that is tragically wrong. I do not think anybody in here wants that to happen, and I just hope it does not happen by a prejudgment based on insufficient information.

I thank you. Do you personally know Mr. Sessions, sir?

Mr. **Flemming**. No; I do not.

Senator **Denton**. Have you ever spoken with or dealt with him on a professional matter or had any dealings with him whatsoever?

Mr. **Flemming**. No.

Senator **Denton**. Senator Heflin.

Senator **Heflin**. I do not believe I have any questions.

Senator **Denton**. Thank you, sir. I will excuse you then. I am sure on behalf of everyone here we have deep respect for the development of the civil rights movement, the contribution which President Eisenhower gave I believe for our national conscience, an overly delayed beginning whenever one might identify it having begun. It was too late. I would honor you for your part in the progress in that matter.

Mr. **Flemming**. Thank you, Mr. Chairman. I have here a statement that I have been requested to ask the committee to accept. It is a statement to the committee by Dr. Benjamin Chavis, who is the executive director of the Commission for Racial Justice of the United Church or Christ. If you have no objection, I would like to offer it so it can follow my testimony.

Senator **Denton**. It will be included in the record, without objection. Thank you very much, and you are excused. Thank you, sir.

[The statement referred to follows:]

STATEMENT TO
UNITED STATES SENATE JUDICIARY COMMITTEE
BY
REVEREND DR. BENJAMIN F. CHAVIS, JR.
EXECUTIVE DIRECTOR

I am speaking on behalf of the Commission for Racial Justice of the 1.7 million member United Church of Christ regarding the nomination of Jefferson B. Sessions III for U.S. District Court Judge in the Southern District of Alabama. We are unequivocally opposed to the nomination of Mr. Sessions for a federal judgeship.

Our opposition to this nomination is based on moral, ethical, judicial and theological grounds. For Mr. Sessions to be even considered for a lifetime position of such high public trust is a blatant affront to all justice-loving peoples and especially to the citizens of the Alabama Black Belt who have been victimized by his attack on their basic constitutional right, i.e., the right to vote.

The United Church of Christ Commission for Racial Justice has been actively working in the Alabama Black Belt for several years. Our involvement in Alabama predates the initiation of the investigation and intimidation of Black leaders for alleged absentee ballot fraud in Perry, Greene, Sumter, Lowndes and Wilcox counties.

We have closely followed the course of the subsequent prosecutions. We also have direct knowledge of the level of fear and intimidation experienced by many Black voters as a result of the unjust prosecutions of Albert Turner, Evelyn Turner, Spencer Hogue and others. Albert Turner, as many of you may know, was a personal advisor to Dr. Martin Luther King and a key organizer of the Selma to Montgomery March which led to the passage of the historic Voting Rights Act of 1965.

Mr. Sessions went far beyond his statutory responsibilities as U.S. Attorney by the manner in which he directed the prosecution of these three defendants. Clearly, the courts and the office of U.S. Attorney should not be used to prosecute citizens for political and racial reasons. While Mr. and Mrs. Turner and Spencer Hogue were acquitted of these unfounded allegations, the investigation and trial have had a chilling and dampening effect on the community.

Mr. Sessions' many vicious and derogatory comments regarding Blacks, the National Council of Churches, the Southern Christian Leadership Conference, the American Civil Liberties Union and others is a matter of public record. This committee has received numerous depositions attesting to this fact, and Mr. Sessions has himself admitted making these statements.

Morally and ethically, the response of the Senate Judiciary Committee should not only be to reject Mr. Sessions' nomination but also to conduct a Congressional investigation of the unjust persecution of civil rights workers in Alabama and other places in the nation around the voting rights issue.

It is no mere coincidence that the Reagan Administration wishes to reward the repressive actions of Mr. Sessions. In the recent past, Black voters in the Alabama Black Belt have turned out in record numbers, but not for Mr. Reagan and his supporters. It is also no coincidence that Mr. Sessions was recommended by Jeremiah Denton, the Republican Senator from Alabama. Senator Denton faces a crucial election in November and a large Black voter turnout could seriously challenge his reelection.

Theologically, we affirm the equality of all humanity and we take strenuous exception to all manifestations of racism. Mr. Sessions' characterization of the National Council of Churches, of which we are a member denomination, as being "un-American" and "Communist inspired" is but another indication of his moral weakness as both a person and a public servant. We, therefore, call for a resolute rejection of the nomination of Jefferson B. Sessions III for any consideration as a Federal judge.

Benjamin F. Chavis, Jr.

Senator **Denton**. Mr. Turner is the attorney for Chestnut, Sanders, Sanders, Turner & Williams, of Marion, AL, and, Mr. Turner, do you have a statement that you would like to make?

STATEMENT OF ROBERT TURNER

Mr. **Turner**. Yes; I do, Mr. Chairman. Mr. Chairman, Senator Heflin, I am Robert Turner, from Marion, AL, and I practice law in Marion. I also defended the defendant, Albert Turner, in the Perry County trial. I am also Albert Turner's brother.

I am not here to retry that case. It has been tried. I am here to voice opposition to the nomination of Mr. Sessions as a judge. I feel that things developed during the trial may be important in assessing Mr. Sessions' qualifications for the judgeship, and I would like to share these with the committee.

In my opinion, a fellow judge should possess a high degree of integrity and he should exhibit at all times impartiality in dealing with the issues and facts as they are presented.

During the course of the trial, things developed that I feel the committee should know about which speaks to the integrity and basic honesty about Mr. Sessions and his ability to deal fairly.

For the most part, Mr. Sessions tried to put on a case by placing witnesses on the stand, knowing at the time that he placed the witness on the stand that he had two and sometimes more than two conflicting statements. He would put the witness on the stand, or the Government would, and then try to use the statement that was most favorable to the defense as impeachment to try to brow-beat the witness into agreeing with what he considered was the most favorable light.

This happened quite often in one case in particular. The witness was on the stand testifying in a manner very favorable to the defense and the Government attorneys gave the judge the impression that the witness was making all of this up, and they knew all the time that this witness had given a statement to the FBI saying exactly what she was saying on the stand. To this, the judge halted the trial and required the FBI to go down and produce the statement which said the very same thing that the witness was testifying to.

I think that goes to the integrity of the man and I think that goes to the fitness of the man to be a judge. This witness' name was Alma Price. Going further, committee members and Mr. Chairman, during the course of the trial one such witness who was not testifying as they had hoped, in spite of knowing that this witness had made other statements who was testifying, this U.S. attorney wrote on a large sheet of white paper with red ink, positioned herself near the jury and on this sheet of paper she had written, "Witness lied." This actually happened in that trial.

Going further, Mr. Sessions has indicated to this committee——

Senator **Heflin**. May I interrupt there?

Mr. **Turner**. Yes, sir.

Senator **Heflin**. You say "she did this." Was this an assistant to Mr. Sessions in the trial of the case?

Mr. **Turner**. Yes, sir.

Senator HEFLIN. Would you identify who it is and as to what, because I think for it to be relevant you have to tie some sort of connection to Mr. Sessions as opposed to the tactics, and whether or not he was involved. I think as a good lawyer you would agree with that.

Mr. TURNER. Yes, sir. This witness' name was—I mean this U.S. attorney, her name was Gloria Bedwell and she and attorney E.T. Rolison in my opinion were the lead attorneys on the case. I cannot say to this committee that Mr. Sessions was in the building when this occurred. I can say to this committee that I made a motion for a mistrial upon discovering such out of the presence of the jury, that Mr. Sessions did appear and to my knowledge he made no reprimand or made no comments to Ms. Bedwell about her conduct.

In conjunction with this testimony, I would like to offer the affidavit of Ms. Rose M. Sanders, who was a spectator who was seated some 8 to 10 feet in the audience and she was able to read what was written on this paper. We would like to offer the affidavit of Ms. Sanders into evidence.

Senator DENTON. Is Rose Sanders an attorney in the same law firm with you?

Mr. TURNER. She is.

[The affidavit referred to follows:]

STATE OF ALABAMA *
* **AFFIDAVIT**
COUNTY OF DALLAS *

BEFORE ME, the undersigned authority, a Notary Public, in and for said State and County, personally appeared **ROSE M. SANDERS**, who being by me duly sworn, says as follows:

"My name is Rose M. Sanders and I reside at 2811-A Highway 14 East, Selma, Alabama 36701. I have practiced law for fourteen (14) years in Selma, Alabama. I am a partner in the law firm of Chestnut, Sanders, Sanders, Turner & Williams, P.C. I attended the trials of United States vs. Albert Turner, et al. in Selma, Alabama as a spectator. The consolidated trials commenced on June 17, 1985 and concluded on July 5, 1985. Toward the latter part of the trial, just before lunch time, Mr. Lawrence Wofford, a citizen attending the trials, brought to my attention Assistant U. S. Attorney Gloria Bedwell. Ms. Bedwell was standing in front of the jury box at the end farthest from the Judge and nearest to the audience. A Black female witness for the government was testifying on redirect. I do not recall her name. Ms. Bedwell's back was partially to the jury. She had a white legal pad in both hands and was holding the pad up in front of the jury as she directed questions to the government's witness. Across the pad were written the words "witness lied" in large red ink. I was sitting behind the bar on the second row of the seats for the audience. I could clearly see the words "witness lied" in red ink. The members of the jury were closer to Ms.

Bedwell than both me and Mr. Wofford. Ms. Bedwell then laid the pad on the banister in front of the jury with the letters clearly visible (See attachments marked Exhibits "A" and "B"). I then passed a note to Mr. Robert Turner, one of the attorneys representing the defendants. The Judge immediately recessed for lunch and Mr. Turner brought the problem to the attention of the Court. Ms. Bedwell did not deny or respond to the charge. I stood in the audience and confirmed to the Judge that Ms. Bedwell did do the foregoing. The Judge admonished her not to do that kind of thing. Mr. Jeff Session left the room before Ms. Bedwell commenced redirect examination. He came back as the Court recessed and was present when the matter was brought to the Court's attention. He did not say anything during the exchange.

Rose M Sanders
ROSE M. SANDERS

SWORN TO and SUBSCRIBED before me on this the 12th day of March, 1986.

NOTARY PUBLIC

MY COMMISSION EXPIRES: 3/31/87

Senator **Denton**. Are you finished with your——

Mr. **Turner**. No, sir.

Senator **Heflin**. Let me inquire on this issue. Where was the location of the piece of paper with the words in red ink "Witness lied" relative to the jury and whether or not the jurors saw it? What was the relationship, as I gather the probative value is the illegal conduct and endeavoring to present a position to the jury that did not allow the defense to object—well, it is certainly an unethical type of activity or a trial tactic. Was it close to the jury? Would you give us information on that?

Mr. **Turner**. Well, Ms. Bedwell, upon writing this on the paper, she moved and positioned herself—there is a railing that the jury is behind, just as you are. Ms. Bedwell brought her notepad and placed it on the railing while she sat on the railing within 2 feet of the jurors sitting in the first row, and she was just, what, 3 feet from the jurors sitting in the second row. I was seated directly——

Senator **Heflin**. Is the eyesight of the jury above the railing or what?

Mr. **Turner**. Yes, sir, the jury can see over the railing just as you are, and the people who were seated in the second row, that row of benches is elevated so that the second row can see over the first row. I would also like to bring——

Senator **Denton**. So we can clarify that, you said it was on a notepad. I am informed that it was on the top of a form FD–302, not on a notepad. It was I guess written by, what, someone in the FBI?

Mr. **Turner**. No.

Senator **Denton**. One of the assistant U.S. attorneys. I must say that the gist of this seems to be a criticism of Ms. Bedwell. She is not subject to this hearing and I think it would require a burden of proof that Mr. Sessions, who only had marginal participation in this trial, if there was guilt on her part, I do not know that it is possible to impute guilt in him.

Mr. **Turner**. Now, I am going to reply to your question as to whether or not it was on the 302 sheet of paper. It was written on 302 at one time and then was on a separate sheet of paper in another case. I saw it written on 302 myself. I was seated behind the U.S. attorneys, but it was also on the sheet of paper I was speaking of.

Senator **Denton**. The only information we have is there is evidence it was on that form. If there is another allegation about a notebook, it is new.

Mr. **Turner**. OK. I would also like to bring to this committee's attention that Mr. Sessions has testified about the Sheltons ballot and the relative strength of their testimony. I would like to bring to this committee's attention that Mr. Sessions failed to tell you that Edward Shelton, one of the Sheltons that he mentioned, gave a statement to the FBI agent, Andrew Duane, on which Mr. Edward Shelton stated that Mr. Albert Turner was present in his home when his wife marked his ballot. He stated that this occurred when he was sitting in the living room and his wife was seated in the kitchen filling out her ballot in addition to his ballot.

I mention that to indicate that even in front of this committee Mr. Sessions is still engaged in refraining from making a full disclosure of the facts.

Now I would like to speak to Mr. Sessions' impartiality. Mr. Sessions has indicated to you that he is interested in cleaning up voter irregularities and voter fraud across the board. The results show otherwise. The results show that this was an investigation of the Perry County Civic League, of which Mr. Albert Turner is the president.

The results showed that Mr. Sessions said that the ballots that he noticed were scratched through or that he thought were tampered with. He went forward and tried to get indictments. I think it is significant that there were ballots that Albert Turner handled on which there were spark throughs. But in the instances in which these spark throughs were in favor of the prowhite group, there were no indictments and no charges brought.

I mention the ballots of Samuel Hudson and Jonas Belcher as being two examples—ballots handled by Albert, ballots that showed scratch-through but the change was in favor of prowhite and no investigation and no indictment.

I also bring to this committee's attention that there were several ballots handled by Andrew Hayden of Uniontown that showed irregularities—no indictments, no grand jury, no investigation and no trials. The ballots of Evelyn Thomas Owens and Zeke Montgomery are examples. Again, this questions Mr. Sessions' impartiality.

Then he has indicated that he examined ballots which showed alterations or irregularities, but there were ballots that became a part of the indictment on which there were no changes, no alterations and no irregularities. The ballots of Willie Lee, Robert White, Eva Smith, and Maggie Fuller are examples, and then very widespread obvious ballots easily seen that were suspect. There were three ballots handled by the Andrew Hayden prowhite group on which the witness signed August 29, 1984, in Uniontown. The ballots was stamped in the Circuit Clerk's office in Marion, AL, on August 30, 1984, but the ballot was witnessed by the pro-Hayden group on August 31, 1984, which indicates that these voters sent their ballots in and the Circuit Clerk send them back to Uniontown after the voter had parted with the ballot. And these were the ballots of Magnolia Eatman, Adlai Fields, and Agnes Bryant.

The source of my information, committeemen, is the office of Jeff Sessions. I had a conversation with Mr. Sessions and he told me you have accused me of being partial in this case, show me where I have failed to investigate. I just want this committee to know that Mr. Sessions gave me this information that I am giving you. The U.S. attorneys office collected all 700-plus ballots and as a part of discovery they gave me copies. I got this information from the ballots that Mr. Sessions gave me.

I replied to Mr. Sessions, you have the information, I filed some of this information and indicated that we were planning to go forward with a selective prosecution theory, but the information that I gave you came from Mr. Sessions' office.

Ladies and gentlemen, the issue is whether or not a person can anticipate justice. Should Mr. Sessions become a judge, I think that is the issue. Mr. Sessions came into Perry County and there were two political factions at odds, he took a side and he went after one and he left the other alone. That is what happened.

Not only that, but should Mr. Sessions become judge, he now has the names of all the Albert Turner and Perry County Civic League cohorts because he has the ballots. As a black attorney with a black client—and I am not sure my answer would not be different if I was a white attorney with a black client—but as a black attorney with a black client and the issue being whether or not blacks can anticipate justice in front of Mr. Sessions, the answer is no.

We appreciate this committee reviewing the actions of Mr. Sessions in light of his ability to be impartial and in light of the integrity that he has exhibited through my contacts with him.

Senator **Denton**. Thank you, sir.

The defendant in the case was your brother, was that correct?

Mr. **Turner**. That is correct.

Senator **Denton**. And the witness who testified about the note was an attorney in your law firm?

Mr. **Turner**. That is correct. I am also testifying to that.

Senator **Denton**. Did you see the note yourself?

Mr. **Turner**. Yes, sir.

Senator **Denton**. In the courtroom at the time, in the location that the witness says it was in?

Mr. **Turner**. Excuse me, please.

Senator **Denton**. You saw the note in the location that the witness said it was in and in the circumstances that the witness said it was in, the other attorney in your law firm?

Mr. **Turner**. I saw her writing the note, and I also saw her go over and lean on the bench. And I saw her put a sheet of paper down in front of the jury.

Senator **Denton**. Alma Price, was that the witness?

Mr. **Turner**. Yes; that is the one witness that I mentioned.

Senator **Denton**. Without addressing the fact or lack of fact in the allegation about the note, Alma Price's testimony is here. It is my information that the assistant U.S. attorney was trying to keep track of the various witnesses who were being brought there and was using the forms to keep track of those witnesses, and was near the jury because that is whom she was addressing. She had been asked to move away from the witness so she got closer to the jury.

And Alma Price's testimony is here. It is contradictory in each time she gives it. And as a matter of keeping track of the witnesses, it is my understanding that when she got to Alma Price, that was the top of the 5302, and I am under the impression that Mr. Sessions conducted an internal inquiry into that, that he did look into the matter.

Mr. **Turner**. Right now, Mr. Chairman, I wonder if you have two matters confused. I am not following you on the Alma Price issue. Alma Price was——

Senator **Denton**. We thought that Alma Price was the one involved with the note on the investigative form.

Mr. **Turner**. No; I am not sure that Alma Price was that witness. Alma Price was mentioned in a different setting.

Senator **Denton**. OK.

On the bottom of page 3 of your prepared statement, you assert that "Indictments in trials will have a serious impact on the ability of campaign workers to secure absentee ballots in the future."

Are you suggesting that in a case with 700 absentee ballots out of 6,000 of votes cast, registered voters, and the unanimous opinion of the Justice Department that the case should have been brought, that a U.S. attorney should refrain from prosecuting voter fraud with that kind of indication that there should be a prosecution?

Mr. TURNER. I have not testified as to whether or not I thought they should have brought it, prosecution.

I will be glad to answer any questions that you would like me to answer about that. But I did not—as far as I am concerned, the prosecution was brought, it was tried, and the Government failed miserably to prove its case.

Senator DENTON. But I am not addressing that.

You say indictments and trials will have a serious impact on the ability of campaign workers to secure absenteeism ballots in the future, and there were a host of newspaper articles saying that the trial was brought as a conspiracy between "me, Meese and the President." And I did not know about the trial until I read about it. And this ties in with that allegation that to bring such a trial will have a serious impact on elections by affecting the ability of campaign workers. So I have to know that.

Mr. TURNER. You would like to know what I mean about that?

Senator DENTON. Yes; why would there be a serious impact on the ability of campaign workers if you bring an indictment and trial when it is proper that one be brought.

Mr. TURNER. I have not said that this was properly brought. I have said that it was brought, it was tried, and it has been done.

Senator DENTON. The Justice Department has said it was properly brought.

Mr. TURNER. Well, I disagree with the Justice Department. But——

Senator DENTON. Neither does Senator Kennedy.

Mr. TURNER. We tried the case.

Now, what I am saying is bringing to trial people who were engaging in first amendment protected activity, and that is what I take that judgment of proof to mean. People engaged in first amendment activities were brought to trial. And for people to feel that they engaged in first amendment of the Constitution's protected activities and be brought to trial and possibly go to jail, possibly jail terms for most people.

Senator DENTON. Well, if it was wrongdoing, I guess there might be cause.

Mr. TURNER. Nobody has said they were wrong. Nobody has proved they were wrong.

Senator DENTON. But there was evidence that——

Mr. TURNER. The trial has been conducted and there was a jury.

Senator DENTON. The people were acquitted. That does not mean that it was improper to bring the case.

You are the first person whom I have heard say something like the prowhite group and the pro-Hayden group.

Mr. TURNER. No, sir.

Senator **Denton**. I mean you are the first person I have heard say that. You have been referring to the prowhite group and the pro-Hayden group; I have never heard that division. Frankly it sounds as if that might be some kind of a racist remark.

But who is Mr. Hayden?

Mr. **Turner**. Well, Senator, I am surprised, but he is the mayor of Uniontown, AL.

Senator **Denton**. So, in your way of looking at the case, there was a prowhite group and a pro-mayor of Uniontown group?

Mr. **Turner**. No, sir.

Senator **Denton**. I thought that was the way you characterized it in your testimony.

Mr. **Turner**. No, sir; I did not characterize my testimony as such.

Mayor Hayden is a member of the prowhite group. He is a black man. That is a minimum of a prowhite group which consists of some blacks and some whites.

Senator **Denton**. Well, I understand what you are getting at.

Mr. J.L. Chestnut, who is your law partner and also a writer for the Selma Times Journal, has an article here, September 22, 1985, headlined "Uncle Tomism to be Dealt With." And he, in that same article, says Senator Denton, Jeremiah Denton, responding to whites such as Cook—I do not even know what he is talking about here—tried desperately to persuade the Justice Department to reject the Perry County redistricting plan.

On my word as a Christian, under oath, I will say I have no idea what in the world the man is talking about. Now he is in your law firm. And I think we are looking at something more than just a trial in Perry County on its merits.

It says, in the last paragraph, one of the major items before the Regional Convention of Black Belt Counties next year will be Uncle Tomism and how to deal with it publicly and effectively. And I think it is presumptious for one group to assume that another group is prowhite per se, and that they are Uncle Toms, and that this all be brought into a trial. It seems to me it should be on its merits. And it was involved, but the question was with 700 absentee voters out of 6,000 registered, that was not for something funny there that needed—out of 6,000 voters, was there not something funny that needed looking into.

That is my statement. I am not asking you for a comment. I will ask you to comment on this.

You have made the following charges in your prepared statement and I ask you to respond to these questions, and remind you that you are under oath.

You state that elderly absentee voters were fingerprinted and photographed by the FBI in Mobile in connection with the Perry County investigation.

I would like to know if you can name any person other than the defendants in the case who was fingerprinted or photographed by the FBI in Mobile?

Mr. **Turner**. To me the defendants in the case were citizens, who were engaged in——

Senator **Denton**. You said elderly absentee voters were fingerprinted and photographed by the FBI.

The defendants were not elderly absentee voters, and it was the defendants in the case that were fingerprinted in Mobile.

Do you know of anyone else that you can name that was?

Mr. **Turner**. No; I do not know of anyone else.

Senator **Denton**. OK.

Mr. **Turner**. Personally I do not know of anyone else.

Senator **Denton**. You implied by the fingerprinting they were intimidating witnesses in Mobile, the FBI was.

I challenge you to name under oath the voters who you contend suffered strokes or heart attacks while in Mobile at the grand jury session.

Mr. **Turner**. I have talked with the son-in-law of Mr. Henry Jackson, and that is where I got that information from.

Senator **Denton**. What did he say?

Mr. **Turner**. He said Mr. Jackson became ill and that he later had a stroke.

Senator **Denton**. When did he become ill?

Mr. **Turner**. His son-in-law, Mr. Elijah Jackson, indicated that he became ill in Mobile.

Senator **Denton**. When did he have the stroke or heart attack?

Mr. **Turner**. It was manifested subsequent to the grand jury hearings.

Senator **Denton**. How long after that?

Mr. **Turner**. I do not know exactly, but I can tell you when I was talking to Mr. Jackson.

Senator **Denton**. Six months maybe?

You said while in Mobile at the grand jury session in your prepared statement under oath.

Mr. **Turner**. Now I am saying that Mr. Jackson indicated that his father-in-law became ill, that he subsequently had a stroke.

Senator **Denton**. You have charged in your prepared statement that the FBI was granted a court order to intercept absentee ballots in Perry County.

You know for a fact and the court records confirm the fact that the ballots were opened by county election officials under a court order requested by four local candidates, three of whom were black.

On what basis did you say that the FBI opened the absentee ballots?

Mr. **Turner**. The statement reads:

> In 1984, the FBI was granted a court order to intercept and open all the absentee ballots in Perry County.

That is a little bit different than what you said.

Senator **Denton**. Excuse me. Would you say that again?

Mr. **Turner**. The statement reads:

> In 1984, the FBI was granted a court order to intercept and open all the absentee ballots in Perry County.

Senator **Denton**. I will take them one at a time. This is reading directly from your statement about the heart attack.

> In October of 1984, the United States Attorney impaneled a Grand Jury in Mobile. Several groups of elderly black witnesses were herded up, placed on buses, and hauled 160 miles. A large number of these people had never left home before. A majority of them were better than 70 years of age. When they got to Mobile, they were fingerprinted and photographed and handwriting samples were taken. Then

they were questioned concerning how they voted and whom they voted for. One man had a stroke while he was down there, and another suffered a heart attack.

In your oral testimony today, you refer to one man, not two, and you have him having a heart attack after, a long time after this. I will get back to the second one as soon as we find it.

All right. Here is—you stated that "The Justice Department made no effort"—this is in quotes—"no effort to indict people from other political factions even when there were clear violations of the law."

Can you name any other people who you claimed violated election laws and were not prosecuted?

Mr. TURNER. I can name people who presented the same indices of alterations there represented by the ballots on which the indictments were made. I have already told the committee about the three people in Uniontown who signed their ballots on one date, August 29. The circuit clerk in Marion received the ballots on August 30, and they were notarized August 31 back in Uniontown.

I would also like to introduce the fact that there is a Mr. L.G. Walker, a white, who was a long time superintendent of education in Perry County. And it is common knowledge that he lives in Tuscaloosa, AL. He was allowed to vote in this election with his Tuscaloosa address.

I have also mentioned the ballots of Evelyn Owens and Zeke Montgomery which show the same type alterations, and there were no indictments.

Senator DENTON. Well, I am not satisfied with your response under oath to the statement you made here about the heart attack and stroke in Mobile among the elderly people who were—I have got your term—hauled down there, or whatever it was. It was a Greyhound bus which was for their convenience because they would have had difficulty finding the courthouse. That is why they were in the bus. And we will have people who were in the bus testify later there were young as well as elderly there.

It appears to me that when you say in 1984 the FBI was granted a court order to intercept and open all the absentee ballots in Perry County, this order was not precleared by the Justice Department as mandated by the Voting Rights Act. It appears that if you go on and say the FBI immediately swooped into Perry County and began to show up at the homes of elderly absentee voters, showing them their ballots and asking them if that was the way they voted and whom they voted for. They went up to these people when there was no conceivable wrongdoing at all on their ballot.

Aside from what I think is evident exaggeration in other ways, I think you imply that the FBI did get in there and fool around with opening the absentee ballots. But I will turn the questioning over to Senator Heflin.

Mr. TURNER. Can I reply to that?

Senator DENTON. Sure.

Mr. TURNER. I was making specific reference, Mr. Chairman, to the five people, Willie Lee, William Williams, Robert White, Eva Smith, and Maggie Fuller.

These people, their ballots were made a part of the indictment even though there was not a single mark or alteration or inconsistency on their ballots. OK. And ordered them—the FBI opened them.

Senator DENTON. We are going to have another panel after this, and I defer to Senator Heflin.

Senator HEFLIN. Are we going to adjourn for lunch?

Senator DENTON. Well, we went 7 hours the other day without adjourning for anything. And I suggest, since they came such a long way, that we just go ahead and eat at the table here.

Senator HEFLIN. That is all right.

Senator DENTON. Go ahead.

Senator HEFLIN. Mr. Turner, I'd like to address this matter of the "witness lied" incident and its relationship to Mr. Sessions.

I have read now the affidavit of Rose Sanders, and I believe there is testimony here from Deval Patrick of the NAACP Legal Defense and Educational Fund.

Basically, as I understand it, what happened was that during the trial, Ms. Gloria Bedwell wrote "this witness lied" on a piece of paper or notepad, or wrote it twice, or some way or another, but put it in the view of the members of the jury. And that Rose Sanders brought this to your attention, and you as an attorney objected to it.

Now, Mr. Sessions was not in the courtroom, as I understand it, at the time that this went on. But was present, I suppose, when it was brought to the attention of the court.

Now, was it brought to the attention of the court other than an objection, or was there a motion for mistrial, and the judge went back into his chambers, or what is the scenario of where Mr. Sessions came into this?

Mr. TURNER. He came in at the time that we were arguing—was arguing. I believe, Mr. Heflin, that I was asking for a mistrial.

Senator HEFLIN. Was this in open court, or was there a session outside the presence of the jury on this issue?

Mr. TURNER. Yes, sir.

Senator HEFLIN. Now, is it your testimony, at least from Ms. Sanders, that when—she says he came back as the court recessed and was present when the matter was brought to the court's attention. He did not say anything during the exchange.

Is it your position that the circumstances were such that he should have admonished to Ms. Bedwell, or what is the relationship for Mr. Sessions relative to this?

Mr. TURNER. Mr. Heflin, the relationship is that this U.S. attorney's office throughout the trial was engaging in little matters such as these. The witness lied. Putting the witness on the stand, knowing that the witness had given other statements, trying to make their own witness tell a story that they wanted to hear.

They also brought a count where a witness had told the FBI that she gave her ballot to another person and that this person had told the FBI that they mailed the ballot. They filed this count against Albert Turner. And the witness lied.

There is a series of events which I hoped this committee will get an overall picture of the integrity of Mr. Sessions who was running that office.

Senator HEFLIN. Well, you are saying that the witness lied is one event of several unfair trial tactics.

Mr. **Turner**. Yes, sir.

Senator **Heflin**. But other than on this witness lied business, you are just saying that he came before the court, and he remained silent?

Mr. **Turner**. Yes; he did.

Senator **Heflin**. Well, was he called upon to say anything?

Mr. **Turner**. He was not called upon. We were before the bench arguing, you know, and he did not make a response.

Senator **Heflin**. All right. That is all.

Senator **Denton**. All right. Thank you, sir.

Dr. Robert Gilliard is a man whom I respect and know as a member of the school board in Mobile. I do not know whether he still is or not. I know he is here to testify in opposition to Mr. Sessions.

I have read your written statement, sir, and you may go ahead with your prepared statement.

STATEMENT OF ROBERT W. GILLIARD

Dr. **Gilliard**. Thank you, Mr. Chairman and members of the committee.

I am Robert Gilliard, president of the Mobile Branch NAACP, National Association for the Advancement of Colored People.

With me is Althea T.L. Simmons, who is director of our Washington Bureau, NAACP.

I appreciate the opportunity to appear before you today. I speak in opposition to the nomination of Mr. Jefferson Sessions III, as U.S. district judge for the southern district of Alabama.

This district includes Mobile and my NAACP branch. I am here to say to the committee that, based on my opinion, and on the reputation of Mr. Sessions in the black community of Mobile, he should not be confirmed as district judge for the southern district of Alabama.

Holding judges to the standard of fairness and impartiality is critical. Mr. Sessions does not have an open mind. He is not fair to blacks or to organizations he deems "un-American."

Many members of the black community believe that Mr. Sessions is biased against blacks and is unwilling to use his office to protect their rights.

It is a well-established criteria that judges must be fair in their actions. Fairness requires a sensitive open ear to listen to the legal concerns of parties before the bench. A judge must be sensitive to the legitimate concerns of every group. Mr. Sessions, in my opinion, would not be fair to members of my race.

He accuses the NAACP, the National Council of Churches, and some other organizations that take stands on foreign policy issues as taking positions against the interest of the United States.

Mr. Chairman, the NAACP believes that a potential Federal District Judge cannot rightfully restrict the legitimate concerns of the NAACP and other organizations to his personal views on what activities the organizations should speak out on.

The interests of the NAACP are not and should not be narrowly limited to domestic civil rights issues. Mr. Sessions ignores the historical work of the association. His narrow view of the NAACP defies its history. Yet, as a judge, if he is confirmed, he would face the monumental and, possibly for him, the insurmountable task of overcoming his personal bias on what activities the NAACP should or should not be engaged in legitimately.

Mr. Chairman, you should be aware that blacks have difficulty finding anything humorous in racial slurs, and for derogatory statements regarding organizations and/or institutions they rely on to protect their constitutional rights. Too many good old boys' statements has stereotypical remarks which have worked to the detriment of the black community.

No, Mr. Chairman and members of this committee, I do not believe that Mr. Sessions is open about the NAACP.

It is also an established criteria that a judge must be impartial as to the substance of the litigation as well as to the parties before him. A judge must not be biased, prejudiced or hostile to the legal actions or to the parties so as to affect his official actions.

We in the Mobile black community do not believe that Mr. Sessions would be impartial as to our interests and rights.

Permit me to take a few minutes to inform the committee of my personal experience with the prosecutor's office headed by Mr. Sessions.

I was elected to the Mobile Board of School Commissioners in 1978. I was elected over three opponents to a place on the board as a result of the 1976 court order of Federal Judge Virgil Pittman, who abolished the at-large scheme of electing school board members. I must add that the basis of the judge's action was the very act which Mr. Sessions regarded as one of the most intrusive pieces of legislation, the Voting Rights Act.

In my case, the chairman of the school board, Mr. Dan Alexander, challenged my right to be a member of the school board. He refused to recognize me and the other black commissioner, Mr. Norman Cox, for motions and to cast votes in school board meetings on November 4, 1981, June 23, 1982, and July 22, 1982. He based his refusal on my being a member of the plaintiff class in the school desegregation case of Birdie Mae Davis. He alleged that I had a conflict of interest as a plaintiff member, president of the NAACP, and as a member of the school board.

As a member of the school board, I voted against a motion to file legal action questioning the status of the plaintiff's class in the 15-year old desegregation lawsuit.

In a mass meeting called by several State elected officials, a number of persons angered by the propitious rulings of the school board president denying the two black commissioners their right to vote signed a petition calling upon the Department of Justice and the U.S. attorney's office to investigate the matter and take whatever legal action that was appropriate. I was one of those elected officials.

No action was taken by Mr. Sessions' office in response to me and to the black citizens of Mobile. Perhaps now this committee can understand how I and other members of the black community feel that, in our opinion, Mr. Sessions is not likely to take steps or to engage in positive actions to enforce or to uphold the rights of black Americans.

Mr. Chairman and members of this committee, what can be more basic than the right to vote? It is highly likely that the NAACP, my constituents and I will appear before the judge who sits on the bench for the Southern District of Alabama. If that individual is Mr. Sessions, we are of the opinion that he would be unable to judge us fairly and impartially on issues before him.

Mr. Hebert, who knows him professionally and respects him, has stated that if he were representing the NAACP, he would have to raise the question to his client and/or counsel regarding a motion to have Mr. Sessions recuse himself from hearing the case because his personal views would most likely interfere with the outcome of the civil rights litigation.

The information before this committee is sufficient, the NAACP believes, in substance and in quantity to persuade the committee to vote against the confirmation of Jefferson Sessions III, to be a Federal District Judge for the southern district of Alabama.

I would like to thank the committee for this opportunity to present the views of the NAACP.

Senator **Denton**. Thank you, Dr. Gilliard.

The only comment, recognizing the controversy that exists characteristically in the Mobile school situation and in many around the country, and already having said that I respect you.

Dr. **Gilliard**. Thank you.

Senator **Denton**. I would like to mention that although Mr. Hebert made the judgment that you attribute to him there were four others from the Department of Justice who disagreed with Mr. Hebert on that. And Mr. Hebert has retracted, I think is the proper word, one of his testimonies which was rather elaborate involving Mr. Sessions, an accusation against him for interfering in the *Conecuh County* case. And he also said, in concluding his testimony, that he took Mr. Sessions' word on anything, and if he said he would be fair, he believed he would be fair.

So, although he is one who shares your views, at least partially, there were four other attorneys from the DOJ who disagreed. And I will turn over the questioning to Senator Heflin.

Senator **Heflin**. Dr. Gilliard, let me see if I can get to the point of your comment about Mr. Sessions and see if we can understand it.

You are contending that after the judge had entered the order requiring the at-large election of the Mobile school board, you were elected and another black was elected from districts?

Dr. **Gilliard**. That is correct.

Senator **Heflin**. You took office. Mr. Alexander, as chairman of the board, refused to allow your vote to count, raising a conflict of interest, contending that you were a plaintiff as president of the NAACP, and brought that suit and, therefore, after you were elected, you continued as president of the NAACP and that presented a conflict and you could not vote.

Now, what was the vote in which Mr. Alexander said this conflict existed? What was it a vote about?

Dr. **Gilliard**. There were three occasions, Senator Heflin, as I indicated.

The vote on November 21, 1982, had to do with the appointing of a citizens committee to consider the aspects, all of the aspects of the *Birdie Mae Davis* case, which was a desegregation case. And make recommendations for settlement to the court.

The other aspect of it I think that you are concerned with is the conflict of interest issue.

Mr. Alexander made a public statement that I had a conflict of interest. He sent those allegations to the Alabama Ethics Commission which the Alabama Ethics Commission found to be unfounded.

Subsequent to that, he continued to allege that I had a conflict of interest because I was a plaintiff in the Birdie Mae Davis, and that the NAACP financed the suit, neither of which was true. I made that clear to the board chairman at that time and many times since then. But he persisted on two other times of denying me my right to vote.

And that is when the public became highly incensed.

Senator **Heflin**. All right.

Now, after he denied you the right to vote, you in effect were appealing to Mr. Sessions to come to represent you in seeing that the order of the court, which had ordered the redistricting and that—what I am driving at, where did this involve Mr. Sessions and what did he do?

Dr. **Gilliard**. In my opinion?

Senator **Heflin**. Yes, sir.

Dr. **Gilliard**. One of the duties of the U.S. attorney or in the State district attorney is two things—there are two things.

One is to prosecute criminals and the other is most assuredly to protect the rights of citizens.

I think that, upon appeal, Mr. Sessions refused or declined or ignored my request for protection of my first amendment rights and my rights under the 1965 voting rights bill. It had nothing to do with Judge Pittman's order.

Senator **Heflin**. In other words, it was not related to carrying out the redistricting order?

Dr. **Gilliard**. No, sir. No, sir.

Senator **Heflin**. By which the representative of that district——

Dr. **Gilliard**. If I had been a member-at-large and the same accusation was made, the same allegation, I would have requested assistance from the U.S. attorney's office to ensure me my rights on that Board.

Senator **Heflin**. All right. That is all.

Senator **Denton**. All right.

Thank you, Dr. Gilliard.

Dr. **Gilliard**. Thank you, sir.

Senator **Denton**. And thank you, Mr. Turner.

You are both excused. Thank you.

One more question, Dr. Gilliard.

Do you know Judge Ferrill McRae?

Dr. **Gilliard**. Yes; I know him.

Senator **Denton**. What kind of a man do you regard him as being?

Dr. **Gilliard**. Senator, I do not know—I know he is a judge. I know that. And I know he handles a lot of criminal cases which I am sure weigh heavily upon him because murder is involved quite frequently. But I am not a social acquaintance of Judge McRae. Therefore I am in no position to judge him on that basis.

Senator **Denton**. How about as a judge, how do you regard him?

Dr. **Gilliard**. I do not know. I have not had—I have not been put in the position of judging Judge McRae on that basis.

I have seen some cases for which I lauded him for the decisions he reached. I have had many complaints from the community that say he was not fair in his decision. But that is a question aside, in my opinion, from the duties of a U.S. attorney.

Senator **Denton**. All right.

Thank you, Dr. Gilliard. You are excused.

Panel 3, will you come forward as I call your names, please?

The Honorable Ferrill D. McRae, judge, 13th judicial circuit, Mobile, AL; Mr. LaVon Phillips, legal assistant and administrative assistant, Perry County district attorney, Marion, AL; Mr. Larry Thompson, attorney, King & Spaulding, Atlanta, GA, a former U.S. attorney in Atlanta, GA; Mr. Eddie Menton, a journalist, Mobile Press Register, Mobile, AL; Mr. William Kimbrough, former U.S. attorney, southern district of Alabama.

Would you please raise your right hands, gentlemen?

Do you swear that the testimony you will give to this hearing today will be the truth, the whole truth, and nothing but the truth so help you God?

[Chorus of I do's.]

Senator **Denton**. Please be seated.

Judge McRae, if you care to, you can make an opening statement.

TESTIMONY OF PANEL CONSISTING OF FERRILL D. McRAE, PRESIDING JUDGE, 13TH JUDICIAL DISTRICT, MOBILE, AL; LaVON PHILLIPS, LEGAL ASSISTANT AND ADMINISTRATIVE ASSISTANT, PERRY COUNTY DISTRICT ATTORNEY, MARION, AL; LARRY D. THOMPSON, ATTORNEY, KING & SPAULDING, ATLANTA, GA; EDDIE MENTON, CITY EDITOR, MOBILE PRESS REGISTER, MOBILE, AL; AND WILLIAM KIMBROUGH, JR., FORMER U.S. ATTORNEY, SOUTHERN DISTRICT OF ALABAMA

Judge **McRae**. Well, I have a prepared statement. I would simply like to give that if that is all right.

Senator **Denton**. Yes, sir.

Judge **McRae**. I see we only have one member here but——

Senator **Denton**. Senator East is on his way in if you care to defer for a moment.

Judge **McRae**. All right.

Senator **Denton**. Senator East, I am glad you came. I recognize the presence of my colleague from North Carolina, Senator East.

Go ahead. We are now about to hear from a panel consisting of the list which I am sure your staff will provide you. And the first man to testify will be the Honorable Ferrill D. McRae, judge, 13th Judicial Circuit, presiding judge, 13th Judicial Circuit, Mobile, AL.

Your Honor.

Judge **McRae**. Mr. Chairman and members of the committee, I thank you for the opportunity to appear before you today. As stated, I am the presiding judge for the 13th Judicial Circuit which, under our State judicial system, is Mobile County. I would also like for you to know, sir, that I am 51 years old, and I am in my 21st year on the bench. I am proud to say that I am a Democrat and, further, that I hold my office and serve at the will of the public. Suffice it to say, I have devoted my entire adult life to the legal profession.

I understand your duties and obligations under article II, section 2 of our Constitution wherein it plainly mandates and limits the President's appointing authority, when it states that it shall be by and with the consent of the Senate.

In holding these hearings, I also understand that rules of evidence are not followed and that allegations of rank hearsay can be lodged against a nominee as being the gospel, or that inferences can be predicated upon inferences. This is totally foreign to a court of law. Gentlemen, it is very difficult to refute or answer the question "When did you stop beating your mother?" if, in fact, you never did.

The one common goal, whether it be in a court of law or in our daily lives, should be to search for the truth. I have read the statements of many of the people who have appeared before you in these hearings. I have found inconsistencies, half-truths, and a few in their zeal to discredit Mr. Sessions were simply loose with the truth. I mention this because the publicity coming out of these proceedings could have far greater consequences than is apparently being perceived here.

I surely hope that a message is not being sent out to U.S. attorneys throughout this country by this committee that illegal voting cases should not be prosecuted, that is if you ever intend to be confirmed by the U.S. Senate, for I agree totally with Congressman John Conyers who said, and I quote:

> I do not suggest here that genuine evidence of illegal activity in voting should not be responded to by those charged with enforcing the law. It should be.

The one common thread running through all or almost all of the testimony thus far against Mr. Sessions is the *Perry County* case. Jeff Sessions is literally being raked over the coals for prosecuting alleged voting irregularities in Perry County. This case, according to some, was politically motivated to discourage blacks from voting, but yet the complaints came from black citizens of this county. I personally find the rationale for such reasoning to be questionable, and this logic escapes me, for the U.S. attorney's office should be open to all men, regardless of race, religion, or station in life.

My knowledge of the facts and merits of the *Perry County* case is limited entirely to what I have read. It is very easy for those who have 20/20 hindsight to say I would not have followed this or that course of action. If it was a mistake in judgment, and I do not know enough to say one way or the other, who among you would not like to take back some decision you made, whether in haste or after studying the options at length. I would submit there is no such mortal among us.

The city of Mobile and Mobile County have, in recent time, been wracked with corruption of public officials. Jeff Sessions has had the courage to tackle these problems without the benefit of taking a survey to see if it were the popular thing to do. No. He had the courage to do his duty. But yet there are a few, some of whom are attorneys in Mobile, who would lead you to believe that these also were politically motivated. And, furthermore, these few would not hesitate to say Jeff made this or that statement with utter disregard for the truth.

Jeff Sessions and his office prosecuted a city commissioner, one circuit judge, one district judge, an attorney, and a car salesman for public corruption. All were convicted and are presently serving time in the Federal penitentiary. It is no secret that others are under investigation at this time by both the Federal Government and the State of Alabama.

The overwhelming majority of the public in Mobile, including the legal profession, applaud Mr. Sessions' efforts to clean up a mess for they also wish to see their tax dollars spent for the public, and not in the pockets of the greedy. But yet there are a few who would accuse Mr. Sessions of only going after Democrats and having a hit list.

Gentlemen, whether you like it or not, there are not many Republican office holders in Mobile County, but Jeff has shown that he will tackle them also. I can assure you that you will hear this all over the country—attorney s for defendants and their clients blasting the Government and the U.S. attorney's office prior to indictment—as having a vendetta against them. This is simply the in technique at this time for those who know they are coming to trial. However, you should give these allegations the credence they are due, and that is simply none.

Two of the most racially sensitive cases ever to be prosecuted in Mobile County was that of one Tiger Knowles in Federal court and one Henry Hayes in State court. These cases were the prosecution of two Klansmen for the murder of Michael Donald, a young black man. In March 1981, Michael Donald was abducted, murdered, and hanged by two Klansmen. When the perpetrators were apprehended, one Tiger Knowles pled guilty in Federal court. The other, Henry Hayes, was tried and convicted in our State court. He was given the electric chair in our court, but this was later reduced to life without parole in the appellate court. I do not know firsthand about the prosecution in Federal court, but can assure you that the State's conviction of Henry Hayes would not have been possible without Jeff Sessions' assistance. Although in the statements I have read, he was given little credit for this.

I also read where some even questioned his competence. This is absolutely preposterous and simply leads me to the inescapable conclusion that some wanted to leave nothing out in attempting in discredit him.

Mr. Chairman and members of the committee, if I believed these allegations attributed to Mr. Sessions, that is, that he is a racist, insensitive to blacks, intimidated old black people in Perry County or what have you, I would personally walk to Washington, DC to urge you not to confirm his nomination. However, based on what I know, this is not true.

I have watched this young man since he started practicing law in Mobile. He is honest, hardworking, fair, and compassionate for all of his fellowmen. I know he possesses those qualities necessary to make a positive contribution to the Federal bench, and again for all men, regardless of race, or station in life.

I thank you for your attention and will be happy to answer any questions you may have.

Senator DENTON. Thank you, Judge McRae.

You recall that Jeff Sessions was responsible for the successful prosecution of a city commissioner, a circuit judge, a district judge——

Judge McRAE. Attorney and a used car salesman.

Senator DENTON. How many of those people were black?

Judge McRAE. Absolutely none. Excuse me, one, the car salesman was black.

Senator DENTON. So the city commissioner was successfully prosecuted——

Judge McRAE. They were all successfully prosecuted.

Senator DENTON. And in my memory I cannot remember in Mobile a city commissioner or a circuit judge being successfully prosecuted. It takes some guts to take someone like that on considering the power structure.

Is that generally correct?

Judge McRAE. I would say that is very correct.

Senator DENTON. I feel that those attached to that city commissioner or the circuit judge or the lawyer, or the car salesman who suffered prosecution successfully—successful prosecution in his hands would probably testify that they did not think it would be in their interests for someone like them to come before him in court. And we have heard some of that today.

Judge McRAE. I would say that would be correct, and I agree with Dr. Gilliard. After 21 years on the bench, I believe you could find an awful lot of people in Mobile County who did not like the decisions I made in this or that case.

I think you could find a number of people who would tell you just about anything you want to know about Judge McRae after 21 years on the bench, whether it be true or not.

Senator DENTON. You say that attacking the prosecutor is the in technique among defense attorneys today and perhaps among others.

One thing that concerns me about this, I believe it has been established that the Perry County vote fraud case had to be prosecuted in the interest of justice. And then you mentioned the prosecution of a number of rough and significant corruption cases in Mobile, and that perhaps his office is working on more, is it your concern that these attacks on Mr. Sessions could have the effect of causing prosecutors in the future to be timid and not to take on individuals with power and influence who are causing a great deal of harm from their power position?

Judge McRAE. Well, I do not think there is many U.S. attorneys who would not like to be a U.S. Federal district judge. I think that answers your question.

The message is being sent out that these cases should not be prosecuted. Of course, I understand the Justice Department to send in an attorney, prosecute them in the event the U.S. attorney does not.

But I think that the wrong has been done regardless of whether it be voter irregularities or whatever. The U.S. attorney's office should respond to that. And if they are being told by these proceedings that, you know, we do not like these cases, and I am saying that that is the perception I get in reading the newspapers concerning this case. I know absolutely nothing about the case other than what I have read.

Senator DENTON. In your reading, did you say that you had read a number of statements presented before this committee? For example, have you read Mr. Hank Sanders' testimony?

Judge McRAE. Yes, I did.

Senator DENTON. Did you find any inaccuracies, perhaps blatant inaccuracies in that testimony and if so, what were they?

Judge McRAE. The only thing I found that was absolutely totally false was that Mr. Sanders made the statement in his prepared remarks—I do not know whether he has even given them yet—but said that a black could not be elected in a county unless the population—unless that county had a majority of blacks in that county. That is not true.

We have a circuit judge in Mobile who did win a county-wide election. In fact, he had no opposition whatsoever. And was reelected in Mobile County countywide.

Senator DENTON. You mean a black circuit judge?

Judge McRAE. Yes.

Senator DENTON. I believe it is accurate to state, and I hope that the members of the press will hear this if they have not heard it before, that Alabama is second among all States in the absolute number of black elected officials. That is not per capita, but second in gross numbers in the entire United States, and that we have the highest number of black mayors of any State in the United States. This is not to gainsay that there are still problems, but I am trying to get some idea of relativity with respect to my own home State.

You are the presiding judge of the circuit, Judge McRae. Do you represent yourself as speaking for all of the judges of your circuit and, if so, would you offer any evidence of that or proof of that? that?

Judge McRAE. Well, I make it a practice not to speak for the court unless I have the approval of the members of the court. But, yes, the judges of the 13th Judicial Circuit sent each member of this committee a telegram which is dated March 17.

It says, and I quote:

> We have all known Jeff Sessions for many years and are familiar with his reputation, which is excellent. We are confident that he would make an excellent federal district judge and would rule impartially in all matters presented to him. The federal judicial system is fortunate to have someone of Jeff's stature available for this judgeship. We urge you to support this fine candidate and his nomination to the federal bench.

That telegram is signed by me, as the presiding judge, Judge Michael E. Zoghby, Judge Braxton Kittrell, Judge Robert Byrd, Judge Edward McDermott, Judge Robert Kendall, Judge Charles Dodson, Judge Cain Kennedy, and Judge John Butler.

So, yes, sir, I do speak for the entire court.

Senator DENTON. Thank you, sir, and you have stated that Judge Cain Kennedy is black, is that correct?

Judge McRAE. That is correct.

Senator DENTON. And he signed that telegram?

Judge McRAE. That is correct.

Senator DENTON. You say in the prepared statement that the overwhelming majority of the Mobile bar agrees with the position you have taken today. On what do you base that statement?

Judge McRAE. Senator, this morning you read it, I believe, but the Mobile Bar Association adopted a resolution, and I do not know this firsthand, but I am told that it was also sent to all of the members of this committee.

It says:

> The Executive Committee of the Mobile Bar Association, Mobile, Alabama, hereby reaffirms its endorsement of U.S. Attorney Jefferson B. Sessions, III, for the position of U.S District Judge for the Southern District of Alabama, and states its firm belief that Mr. Sessions is eminently qualified for the position of U.S. District Judge; that he has been fair with all persons, regardless of race or national origin, and any suggestion that Mr. Sessions is racially prejudiced is both unfounded and unfair.

That was, again, I believe, sent to each member of this committee by the Mobile Bar Association.

Senator DENTON. You say you have known Jeff since he started practice in Mobile. Have you ever known Jeff Sessions to make any remark that could truly indicate any racial insensitivity?

Judge McRAE. No, sir; none at all.

Senator DENTON. Is Jeff Sessions a personal or social friend of yours with whom you have developed some kind of——

Judge McRAE. Jeff is approximately 40 and I am 51, so that rules out the—he is a Republican and I am a Democrat. That rules out a whole lot of close companionship. He is not a close personal friend of mine, but I have simply watched the young man since the day he started practicing law in Mobile.

He first went to the U.S. attorney's office as an assistant, I believe I am correct in saying in 1975. So he has been active in that position for 11 years now. He has appeared before me many times in court.

There was approximately a year-and-a-half, I believe, interval in changes in administration that he was not in the U.S. attorney's office either as an assistant or as the U.S. attorney, and he appeared before me many times.

Senator DENTON. In those experiences—you may have answered this adequately, but I have got to ask for the record in a separate question—how would you rate Mr. Sessions as to courage, honesty, and hard work? Do you consider those important characteristics of a judge, and has he displayed proper judicial temperament?

Judge McRAE. In my opinion, he has. Jeff is an extremely hard worker. I do not keep the statistics or the numbers out of his office, but from the cases that I have related to you, they demand a great deal of time.

I do not think anyone in the world could question his honesty and integrity. Again, he has never made any statement in my presence that would indicate in any way any racial insensitivity on his part.

Now, as for judicial temperament, I think that Jeff, yes, has the ability to listen fairly and impartially and to make a decision. The prerequisite for any judge is average, or a little better, sense, the desire to work, and he has shown that he has those qualities.

Senator DENTON. Thank you, Judge McRae.

I will ask, without objection, that the documents to which you referred backing your statement that you spoke for your fellow judges and for the Mobile Bar Association, and other documents to which you referred, if any, be placed in the record.

[Letter follows:]

CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT
FERRILL D. MCRAE, JUDGE
MOBILE, ALABAMA
36602

JUDGE'S CHAMBERS

March 17, 1986

Honorable Howell Heflin
United State Senator
For the State of Alabama
Senate Office Building
Washington, D.C. 20510

Dear Senator Heflin:

We have all known Jeff Sessions for many years and are familiar with his reputation which is excellent. We are confident that he would make an excellent Federal District Judge and would rule impartially in all matters presented to him. The Federal Judicial system is fortunate to have someone of Jeff's stature available for this judgeship. We urge you to support this fine candidate in his nomination to the Federal Bench.

Sincerely,

Ferrill D. McRae, Presiding Judge
Thirteenth Judicial Circuit of Alabama

Judge Michael E. Zoghby, Circuit Judge
Judge Braxton L. Kittrell, Jr., Circuit Judge
Judge Robert L. Byrd, Jr., Circuit Judge
Judge Edward B. McDermott, Circuit Judge
Judge Robert G. Kendall, Circuit Judge
Judge Charles H. Dodson, Jr., Circuit Judge
Judge Cain J. Kennedy, Circuit Judge
Judge John P. Butler, Circuit Judge

Judge **McRae**. Senator, again, I think these were sent to you, but would you like the copies that I have?

Senator **Denton**. We have copies. That is just a routine request; we have to ask for objections to get them permanently in the record.

Now, since Senator Heflin has been here, Senator East, I shall defer to him at this point.

Senator **Heflin**. Judge McRae, you mentioned Judge Cain Kennedy and the fact that he had been elected without opposition in Mobile County. Mobile County, I believe, is about 40-percent black.

Judge **McRae**. Approximately 30 percent, but Dr. Gilliard can answer that better than I can.

Senator **Heflin**. To point out the fact that blacks have been elected——

Judge **McRae**. He corrected me and said 42.

Senator **Heflin**. A member of the Supreme Court of Alabama is black.

Judge **McRae**. That is correct. In fact, I helped—well, let me say I did what I could do to help elect Oscar Adams to the Supreme Court of Alabama.

Senator **Heflin**. He was appointed and then he later ran and was elected in a contested race.

Judge **McRae**. That is correct, with white opposition.

Senator **Heflin**. Some might describe the race as having racial overtones. He might have become involved in it, but nevertheless he was elected. I will not ask you to comment on whether there were racial overtones, but there was that indication of some charges made about that.

Judge **McRae**. Well, Senator, if I can respond to that, as I recall, the opponent ran his picture and Oscar Adams' picture and said nothing else, indicating he is black, therefore he is not competent or capable.

But the electorate took care of that and Justice Oscar Adams won handily in the State of Alabama.

Senator **Heflin**. And he does a great job according to all that I have heard.

Judge **McRae**. He does an excellent job.

Senator **Heflin**. Now, let me ask you about the Mobile County Bar Association. You said that was by the executive committee. Do you know whether there are any blacks on the executive committee?

Judge **McRae**. Senator, I really do not know. In fact, I could not tell you how many members are on the executive committee. I do know that there are a number of black members of the Mobile Bar Association because I spoke to them two weeks ago and I know that firsthand.

Whether any blacks are on the executive committee, it would not be fair for me to say because I simply do not know.

Senator **Heflin**. That is all.

Senator **Denton**. Senator East.

Senator **East**. I have no questions, Mr. Chairman.

Senator **Denton**. Thank you very much, Judge McRae. If you choose, you may stay. Otherwise, you are excused, but you are welcome to stay, and it might be a good idea if you did.

Mr. Lavon Phillips——

Senator HEFLIN. Let me ask one other question.

Do you have any idea how many black lawyers are in Mobile itself?

Judge McRAE. Senator, it would simply be a guess, but it would be in the neighborhood of approximately 30. Mr. Kimbrough maybe can answer that question more correctly, but if I had to guess, I would say it would be 30 or more.

Senator HEFLIN. Do you have any idea of the total number of lawyers in Mobile?

Judge McRAE. Yes, sir.

Senator HEFLIN. What is that?

Judge McRAE. In excess of 800.

Senator HEFLIN. That is all.

Judge McRAE. And I might say that is too many.

[Prepared statement follows:]

TESTIMONY OF
JUDGE FERRILL D. McRAE

Presiding Judge
Thirteenth Judicial Circuit
Mobile, Alabama

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear before you today. I am the Presiding Judge for the Thirteenth Judicial Circuit which under our State Judicial System is Mobile County. I would also like for you to know that I am 51 years old and that I am in my twenty-first year on the Bench. I am proud to say that I am a Democrat, and further that I hold my office and serve at the will of the public. Suffice it to say, I have devoted my entire adult life to the legal profession.

I understand your duties and obligations under Article II, Sec. 2 of our Constitution wherein it plainly mandates and limits the President's appointing authority, when it states it shall be . . . "by and with the Consent of the Senate." In holding these hearings, I also understand that rules of evidence are not followed and that allegations of rank hearsay can be lodged against a nominee as being the "Gospel," or that inferences can be predicated upon inferences. This is totally foreign to a court of law. Gentlemen, it is very difficult to refute or answer the question -- "When did you stop beating your mother?", if in fact you ~~n~~ever did.

The one common goal whether it be in a court of law or in our daily lives should be to search for the truth. I have read the statements of many of the people who have appeared before you in these hearings. I found inconsistencies, half-truths, and a few in their zeal to discredit Mr. Sessions were simply "loose" with the truth. I mention this because the publicity coming out of these proceedings could have far greater consequences than is apparently being perceived here. I surely hope that a message is not being sent out to U.S. Attorneys throughout this country by this Committee that illegal voting cases should not be prosecuted, that is if you ever intend to be confirmed by the Senate, for I agree totally with Congressman John Conyers who said:

> "I do not suggest here that genuine evidence of illegal activity in voting should not be responded to by those charged with enforcing the law. It should be."

The one common thread running through all or almost all of the testimony thus far against Mr. Sessions is the Perry County case. Jeff Sessions is literally being raked over the coals for prosecuting alleged voting irregularities in Perry County. This case according to some was politically motivated to discourage blacks from voting, but yet the complaints came from black citizens of this county. I personally find the rationale of such reasoning to be questionable, and this logic escapes me, for the U.S. Attorney's office should be open to all men regardless of race, religion, or station in life. My knowledge of the facts or the merits of the Perry County case is limited to what I have read. It is very easy for those who have 20/20 hindsight to say, I would not have followed this or that course of action. If it was a mistake in judgment, and I do not know enough to say one way or the other, who among you would not like to take back some decision you made whether in haste or after studying the options at length. I would submit there is no such mortal among us.

The City of Mobile and Mobile County have, in recent times, been wracked with corruption of public officials. Jeff Sessions has had the courage to tackle these problems without the benefit of taking a survey to see if it were the "popular" thing to do. No, he had the courage to do his duty, but yet there are a few -- some of whom are attorneys in Mobile who would lead you to believe these also were politically motivated. And furthermore, these few would not hesitate to say Jeff made this or that statement with utter disregard for the truth. Jeff Sessions and his office prosecuted a City Commissioner, one Circuit Judge, one District Judge, an attorney, and a car salesman for public corruption. All were convicted and are presently serving time in the Federal penitentiary. It is no secret that others are under investigation at this time, by both the Federal Government and the State of Alabama.

The overwhelming majority of the public in Mobile, including the legal profession, applaud Mr. Sessions' efforts to clean up a mess for they also wish to see their tax dollar spent for the public, and not in the pockets of the greedy. But yet there are a few who would accuse Mr. Sessions of only going after Democrats and having a "hit list." Gentlemen, there just are not many Republican officeholders in Mobile County, but Jeff has shown he will tackle them also. I can assure you that you will hear this all over the country -- attorneys for defendants and their clients blasting the Government and the U. S. Attorney's office prior to indictment -- as having a vendetta against them. This is the "in" technique at this time for those who know they are coming to trial. However, you should give these allegations the credence they are due, and that is none.

Two of the most racially sensitive cases ever to be prosecuted in Mobile County was that of one Tiger Knowles in Federal Court and one Henry Hayes in State Court. These cases were the prosecution of two Klansmen for the murder of Michael Donald, a young black man. In March of 1981, Michael Donald was abducted, murdered, and hanged by two Klansmen. When the perpetrators were apprehended, one Tiger Knowles plead guilty in Federal Court, and the other Henry Hayes was tried and convicted in our State Court. He was given the electric chair in our Court, but this was later reduced to life without parole in the Appellate Court. I do not know firsthand about the prosecution in Federal Court, but can assure you the State's conviction of Henry Hayes would not have been possible without Jeff Sessions' assistance. Although in the statements I have read he was given little credit for this. I also read where some even questioned his competence. This is absolutely preposterous and simply leads me to the inescapable conclusion some wanted to leave nothing out in attempting to discredit him.

Mr. Chairman and members of the Committee, if I believed these allegations attributed to Mr. Sessions, that is, that he is a racist, insensitive to blacks, intimidated old black people in Perry County or what have you, I would walk to Washington, D.C. to urge you not to confirm his nomination. However, I know them not to be true. I have watched this young man since he started practicing law in Mobile. He is honest, hard-working, fair, and compassionate for all of his fellow man. I know he possesses those qualities necessary to make a positive contribution to the Federal Bench, and for all men, regardless of race, religion, or station in life.

I thank you for your attention and will be happy to answer any questions you may have.

STATEMENT ADOPTED BY MOBILE BAR ASSOCIATION EXECUTIVE COMMITTEE ON MARCH 17, 1986

The Executive Committee of the Mobile Bar Association, Mobile, Alabama, hereby re-affirms its endorsement of U. S. Attorney Jefferson B. Sessions, III, for the position of U. S. District Judge for the Southern District of Alabama, and states its firm belief that Mr. Sessions is eminently qualified for the position of U. S. District Judge, that he has been fair with all persons regardless of race or national origin, and that any suggestion Mr. Sessions is racially prejudiced is both unfounded and unfair.

MOBILE BAR ASSOCIATION
EXECUTIVE COMMITTEE
153 Government Street
Mobile, Alabama 36602

Senator **Denton**. If I may go to Mr. LaVon Phillips, legal assistant and administrative assistant, Perry County district attorney, Marion, AL, Mr. Phillips, thank you for coming on short notice.

You are free to make any statement you would care to at this time and then we will ask you questions.

Mr. **Phillips**. Senator Denton, Senator East, Senator Heflin, my name is LaVon Phillips. I have been living in Marion, AL, approximately now for 5 years. I first came to the State in 1977.

While graduating from undergraduate school and later law school, I was employed by the district attorney in May 1981. I held various positions in the district attorney's office. I started out at the bottom, from a child support investigator to the position I have now.

I worked the 1982, or investigated the 1982 alleged voter fraud situation in Perry County and, subsequent to that, the 1984 voter fraud investigation in Perry County, the primary.

I am here to clear up certain discrepancies on the record basically pertaining to the bus ride from Marion, AL, to Mobile, AL—I think it was on October 23, 1984—and also the subsequent activities that took place in Mobile when the bus arrived in Mobile and the makeup of the Federal grand jury and the county grand jury in 1982, and other entities that were involved in the vote fraud investigation.

Thank you.

Senator **Denton**. Thank you, Mr. Phillips. As you know, this is a confirmation hearing looking into Mr. Jefferson B. Sessions' qualifications and suitability for appointment as a judge of the U.S. district court for the southern district of Alabama.

Do you know Mr. Sessions?

Mr. **Phillips**. Yes; I do.

Senator **Denton**. For how long?

Mr. **Phillips**. I have been knowing Mr. Sessions for approximately 4 years.

Senator **Denton**. How did you come to be acquainted with him?

Mr. **Phillips**. I had met Mr. Sessions—myself and Roy Johnson visited Mr. Sessions in Mobile; I think it was in the spring of 1982 or 1983. Our main purpose in meeting Mr. Sessions was to talk about the voting irregularities in Perry County at that time.

Senator **Denton**. Mr. Johnson is the district attorney in Perry County?

Mr. **Phillips**. Yes, Senator.

Senator **Denton**. Would you describe the conditions in Perry County with respect to the procurement of absentee ballots, the problems that have existed in the past in 1982 and 1984, and generally your involvement in the *Perry County* case?

Mr. **Phillips**. Well, starting in 1982, we received several complaints from incumbent black candidates and black voters that absentee ballot applications were being mailed to citizens' homes without their request; people were going to the polls trying to vote. They were told that they had already voted absentee, which they did not.

There were several other incidents that led up to our investigation. We empaneled a grand jury. The racial makeup of that grand jury was 11 blacks and 7 whites. Take in mind this is a 1982 grand jury.

We missed the indictment by two votes, which means that either two of the blacks did not vote for the indictment—this is my opinion—or two of the whites did not or one of the blacks and one of the whites did not vote for an indictment. You need 13 for an indictment, out of 18.

Senator **Denton**. You calculate, then, that 11 blacks of 13 voted for indictment?

Mr. **Phillips**. Right, with a black grand jury foreman.

The grand jury report that was initiated subsequent to the vote strongly urged that the district attorney's office and other law enforcement agencies investigate the situation in Perry County because it was becoming very abusive and the black incumbent candidates at the time were rather terrified that they had to fight or had to put up with certain evils in the community or in political atmosphere that they really did not want to deal with.

Take in mind that the political situation in Perry County is not only a white and black power struggle. You have a black-on-black power struggle in Perry County. The voters in Perry County—let me say this: It is my opinion, and there is a lot of other opinions in Perry County, at this particular time that black voters are more sophisticated now. They are voting more of their convictions, their interests, rather than relying on the, per se, black civil rights leadership.

When this happens, your black power base, or your black militant power base, whoever that may be, becomes neutralized. And because of this, this is why we have the present situation in Perry County today and all over this country.

Most—my opinion, again—most black politicans and most white politicians think that all black people think alike. That is not true, when it comes to their political convictions. I have my interests, Larry has his, and so on.

This is what is happening in Perry County. We have a black-on-black power struggle. Now, do not mistake me; there are still some evils in the white community that still exist today that we are trying to eradicate.

But the situation in Perry County is that white and black together want to get together and eradicate these problems, and there is a faction out there that wants to make the community mad, the black community mad, where, hey, they do not want them to associate or be aligned with that white political faction.

I talked to Albert Turner the other day—some time ago, really. It is nice to have control of the courthouse, as you may see it, but political power with no economic power is really no power at all—zero.

What is the use of running the whole courthouse if you are not running anything else around it? We have to work together, and there are some people in Perry County, black and white, who are trying to get a coalition together.

They have criticized the coalition. Sometimes, I criticize the coalition because it has to be a real coalition. But we are trying to find some answers where we can put things in the past and move forward for economic stability and equal voting rights for everybody.

Senator **Denton**. How about the absentee situation, as it appeared to you, in Perry County in 1982–84, say? Do you have any recollections of that?

Mr. **Phillips**. Well, the initial process which started our investigation, I must clear up; the Justice Department lawyer who was on panel 1, who was sitting in Mr. McRae's—Mr. Keeney——

Senator **Denton**. That was Mr. Keeney, right.

Mr. **Phillips**. He stipulated that there was not a court order from a circuit judge in 1982. There was a court order from circuit judge, retired, Ecker Russell. There was an election contest filed by black incumbent candidates to seize the absentee ballots.

Well, the court order stipulated for them to number them as they was coming into the registrar's office when they were counting them. Mr. Turner stated that there were FBI agents opening the ballots. That may be true, but they were not the first.

When the ballots initially was being counted, the board of registrars, or the election officials, at that particular time—I think there are 12 on that body; 6 are black, 6 are white, and they are confronted with each other during the same time these votes are being counted.

So, basically, these people were the ones who opened the ballots first. Once the ballots were numbered and collected, we just concentrated on looking at the affidavit on the back of the absentee envelope.

You have your voter's seal, signature, and that of a witness, which is required by law. We started writing down names, trying to gather potential suspects. And take in mind at this particular time that our state of mind was not—and I repeat was not—to go after Albert Turner or any member of the Perry County Civic League.

We were just doing our duty under law as far as carrying out our duty in the district attorney's office. We had legitimate complaints, and if you are in a district attorney's office, you do not compromise your position. You have to do what you have to do within the confines and the boundaries of the law.

So once we collected these names, we came up with a list of members who are associated with the Perry County Civic League. Not only was it Albert Turner, Evelyn Turner, Spencer Hogue; there were numerous other personalities involved.

We went out to question some of the voters who cast an absentee ballot. Several voters indicated that they did not vote their convictions; that the ballots were picked up. They have their ballots, in confidence, to several members of the Perry County Civic League.

They were, you know, overly disgusted, upset, that their ballot was changed. This is what gave us the reason, more or less, to go down and talk to Jeff Sessions. When we went to Jeff Sessions after the grand jury failed to indict, Jeff Sessions refused—he literally refused to prosecute the case. I was mad at Jeff Sessions myself.

Jeff emphasized, hey, the grand jury, who is by and large the conscience of the community, stated their claim; they did not want to indict. So Jeff thought that that would be un-American, if you will, to go ahead and prosecute the Perry County situation.

He declined. We were upset about it. So 1984 came around. Reese Billingslea, Warren Kynard—Reese was the incumbent candidate for county commission, place one. Warren Kynard was the incumbent candidate for the tax assessor's position.

And they came to us that Thursday before the election, and Warren and Reese told us about the irregularities that was happening with the absentee process in Perry County. And Roy informed Reese and Mr. Kynard to contact Jeff Sessions.

Also, he asked us would we file a lawsuit. Well, see, we cannot do that. Basically, since they are candidates, they would have to file a lawsuit. So they hired Jim Barnes, an attorney in Marion, AL; filed a lawsuit.

Judge McElvey granted the TRO, temporary restraining order. The ballots were numbered in accordance with the envelopes, OK. Then Jeff decided—I am trying to get back to the prerequisites before I start talking about Jeff Sessions, if I can remember.

Then Gary Clem was contacted—Special Agent Gary Clem, who is a special agent in the Selma office—and he came down and spoke with us, and Jeff decided to have the case investigated.

When the witnesses were gathered to go to Mobile, the city of Marion chartered a Greyhound bus to carry all the witnesses to Mobile. I was on that bus. I told the district attorney, Royal Johnson, to carry my clothes to Mobile and I just rode the bus with the witnesses.

Senator DENTON. Excuse me. Would you repeat that last sentence?

Mr. PHILLIPS. I told Roy Johnson—I was about to ride to Mobile with Roy, but I told him that I would ride the bus with the witnesses and he was to carry my clothes to Mobile.

Everything went smoothly as far as the witnesses getting on the bus, getting settled. There was not any turmoil or turbulence as far as gathering the witnesses together. The ones that wanted to go—the ones we subpoenaed and wanted to go, they went.

There were some people that were subpoenaed that did not show up, and not at one time did we try to seek a contempt order to make those people come to Mobile.

Senator DENTON. Why would you not have? Is it not proper that they respond to a subpoena?

Mr. PHILLIPS. It is proper, but we just did not—we did not intimidate people; I will just put it that way.

Senator DENTON. Were you maybe leaning over a little backwards? I wonder if Mr. Sessions, the first time he did not accept that trial, did that because he did not want to be accused of what he is being unjustly accused of now.

Mr. PHILLIPS. I am sorry, sir. Repeat that, please.

Senator DENTON. I say, I wonder if there was any leaning over backwards a little bit to make sure you were not being accused of what you have been accused of.

Mr. PHILLIPS. Absolutely, yes.

Senator DENTON. Absolutely. Thank you. Go ahead.

Mr. PHILLIPS. I am having—well, I am not having problems; I have problems with the testimony of the Reverend O.C. Dobynes. He was also on that bus.

Senator DENTON. He has not testified yet, but he will testify. His statement has been made available. You have looked at it.

Mr. PHILLIPS. Yes, sir.

Senator DENTON. You may go ahead and comment.

Mr. PHILLIPS. He alleged in his statement that there were numerous amounts of police officials; that guns were drawn; that people was forced upon the bus. And I used to have a great deal of respect for Mr. Dobynes not only as a man, but as a member of the clergy.

And after reading those allegations, in which I was involved, I have lost any and all respect. None of those people was inflicted by any undue influence at all—none. When we were on our way to Mobile, Reverend Dobynes took a seat in the back of the bus.

When we were on our way to Mobile, Reverend Dobynes took a seat on the back of the bus. We had traveled maybe 50 miles. I had noticed that Reverend Dobynes was all of a sudden sitting in the middle of that bus.

What he was doing was he was talking, discussing the case with each one of the witnesses. I politely turned to Mr. Dobynes and I told him explicitly not to talk to any of the witnesses concerning their case; that not only that it is not my business; that each witness on that bus' circumstance was different.

Mr Dobynes displayed—his attitude displayed nothing but hysteria. He verbally sought at me for no reason at all, and when we got to Mobile we arrived at the Econo Lounge. All the witnesses got off the bus.

Gary Clem, the special agent, was already there. He went to the Federal building, to the marshal's office, to get expense money for the witnesses. They were given checks to pay for their rooms, to buy their food.

As far as Mr. Dobynes is concerned, he did not even stay in the hotel that night; he left. So how can he have any actual knowledge of what went on concerning the witnesses on that bus? He was not there; he stayed somewhere else. He left the hotel the moment the bus arrived.

The next day when the grand jury was in session, the Federal grand jury, and E.T. Rollison was the questioner on the grand jury, Mr. Dobynes again, in the witness room, was harassing several of the witnesses.

We had received several complaints from several witnesses that they did not want to be associated with Mr. Dobynes anymore. They requested to be put in another room.

This is what happened concerning the bus ride. As far as the health and welfare of each witness on that bus, no one, to my personal knowledge, complained of any illness or any undue influence, as I stated above, was inflicted upon them.

Any questions, please?

Senator DENTON. Did any man have a stroke and another man have a heart attack down there as a result of being hauled down there 160 miles, after being herded up, and so on? Those are the words of a previous witness, Mr. Turner.

Mr. PHILLIPS. Please repeat the question, please.

Senator DENTON. Surely. Did you have knowledge of the kind of treatment that would result in a man having a heart attack or a stroke—another man, supposedly—according to Mr. Turner, as a result of being herded up, placed on buses and hauled 160 miles?

When they got to Mobile, they were fingerprinted and photographed and handwriting samples taken, questioned concerning how they voted and whom they voted for. You are reporting that, having been on the bus, there was no jostling of the people.

Indeed, you did not even seek contempt citations against those who were not responding to the subpoena. You tried to stop Reverend Dobynes from discussing the case with the people, and then when they arrived, they were given expense money and food money, and apparently spent the night there before they went through any further procedure. Is that——

Mr. PHILLIPS. Yes, sir. Any allegations that were made concerning the fingerprinting or—what were the other allegations, please, Senator?

Senator DENTON. Photographed, and handwriting samples were taken, you know, when they got to Mobile.

Mr. PHILLIPS. That is ludicrous. That did not happen.

Senator DENTON. Ludicrous.

This is with reference to the question of the percentage of the population racially: in 1980, whites, 67.6 percent; blacks, 31.4 percent; other, 1 percent. That is Mobile the city of Mobile.

What do you know about the percentage of absentee ballots? I gave general estimates. Can you be more specific about the absentee ballots in the 1982 and 1984 elections in Perry County?

Mr. PHILLIPS. I will be as specific as I possibly can. In 1982, there were 1,000 cast. From my figures, one out of every five voters in Perry County in 1982 voted absentee.

Senator DENTON. That is compared to 1 in 1,000 in Jefferson County?

Mr. PHILLIPS. Absolutely correct.

In 1984, I think there were 800-some-odd absentee ballots cast.

Senator DENTON. How would you describe the reaction of the witnesses in a little more detail when they found out their ballots had been altered?

Mr. PHILLIPS. Well, a lot of them were devastated. I visited the Sheltons, who were named in the indictment as some of the ballots that were changed, and they were really devastated and they really took it rather bad, you know. They were really upset about it.

And take in mind that some of the Sheltons are not old people. A lot of those people were in their 20's and 30's, OK. See, not all of these people who were a victim of this voter fraud was senior citizens; they were young people.

I mean, I look out my office window in the Perry County courthouse and people were sitting around on the steps voting absentee. That is not what the absentee process—that is not the purpose of the absentee process.

You are only supposed to vote absentee, one, if you are out of the county that day, if you are working; two, you are sick and you are in a nursing home or something. That is the only time you vote absentee.

Senator DENTON. To your knowledge, was any person interviewed, harassed or intimidated by the FBI?

Mr. PHILLIPS. Well, let me say this, Senator: I did not get around to all the interviews which the FBI conducted. The interviews that I participated in—if we went to a person's house and they did not want to cooperate, I strongly urged that FBI agent to let it be, leave it alone.

But there were only a few where people did not cooperate and we never did——

Senator DENTON. Congressman Conyers was to testify here today; he excused himself and I guess he is out there. We have his testimony in writing and it has to do with the appearance of Albert Turner before Congressman Conyers' subcommittee.

Before that subcommittee, Mr. Turner said that the polls were open only from 1 to 5 p.m., and that that is why people needed to vote absentee ballot. Would you respond to that?

Mr. PHILLIPS. Well, Senator, I am an appointed poll inspector in Perry County; I work the polls myself. The polls are open, I believe, from 7 or 8 until 6 in the afternoon.

Senator DENTON. Seven or eight o'clock in the morning until 6 in the afternoon?

Mr. PHILLIPS. Right, until 6 in the afternoon.

Senator DENTON. I will be asking Mr. Conyers if he is aware that Turner's testimony in that respect was erroneous.

Turner also told that subcommittee that the FBI interviewed 1,000 people. My information is that less than 200 were interviewed in this case. Could you comment on that?

Mr. PHILLIPS. That is correct.

Senator DENTON. Turner said before that subcommittee that on a bus trip from Perry County Mobile, one person had a stroke, one had a heart attack. That is sort of beyond the testimony we received from Mr. Turner today.

No one on the bus was ill. Can you attest to that?

Mr. PHILLIPS. No one was ill subsequent—you know, to my personal knowledge, no one was subsequently ill either.

Senator DENTON. We heard from Robert Turner today; that is Albert Turner's brother. This is Albert Turner's testimony before the House subcommittee.

Turner, the one who testified before the subcommittee, the brother of the gentleman here today, said there were three different trips to Mobile, and I believe that you can attest to the fact that there was only one, is that correct?

Mr. PHILLIPS. Yes, sir.

Senator DENTON. Turner said the 1982 grand jury report recommending Federal investigation was inserted later. I am not sure what that means, but maybe you do. It was added to the grand jury report later. Do you know whether that——

Mr. PHILLIPS. That is not true. That grand jury was signed by Jesse Billingsley, a black grand jury foreman, at that particular time.

Senator DENTON. Mr. Turner also testified before that subcommittee that 10 to 15 FBI agents worked for 6 months. I believe that is incorrect; that something like 10 worked maybe 3 or 4 days on a couple of occasions. Is that correct?

Mr. PHILLIPS. Repeat the question, please, again, sir.

Senator DENTON. Yes. Would you tell me about how many FBI agents worked on the case and for about how long, how many days?

Mr. PHILLIPS. Is that the 1984 case?

Senator DENTON. Yes.

Mr. PHILLIPS. Well, there were—I will answer it like this. Gary Clem was in charge—special agent out of Selma—was in charge of that investigation. There were FBI agents in and out who were—mainly, it was Gary Clem; Leslie Soo, who is an Oriental FBI agent; John Kilday—I believe his name is John; Ed Greenwall; a young lady by the name of—one female FBI agent.

I would not say no more than six or seven.

Senator DENTON. For how many days? He said for 6 months there were 10 to 15.

Mr. PHILLIPS. No; I think they came in and I think the investigation was finalized in about 8 to 9 weeks.

Senator DENTON. And about how many days, total, do you think the FBI were actually in presence in Perry County doing work, or is that hard to say?

Mr. PHILLIPS. That is hard to say, but like I said previously, the investigation was consummated in about 8 to 9 weeks.

Senator DENTON. Mr. Phillips, when you became involved in the Perry County vote fraud investigation, did anyone, black or white, attempt to influence or intimidate you with respect to your role in that investigation?

Mr. PHILLIPS. Yes, sir. I was receiving abusive phone calls in my office, at home. It was hard for me to socialize without public abuse from certain members of the community. In 1982, I was harassed and assaulted outside the Perry County Courthouse by Spencer Hogue.

I was leaving the courthouse, going home. He came up behind me and grabbed the back of my sports coat. And I quote, "If you do not leave my people alone, I am going to get you."

Senator DENTON. He was a member of the Perry County Civic League?

Mr. PHILLIPS. Yes; he later apologized, but only at the request of Sheriff Hood. Spencer Hogue was working as a jailer at that particular time and I was not interested in having Mr. Hogue prosecuted, but I did ask for an apology face to face.

But, instead, he calls me at home on the telephone. Someone who insults you like that, you know, there is a better way to apologize to somebody than using the telephone. So I considered it not to be an apology.

Senator DENTON. Are you related in any way to Mr. Albert Turner, the defendant in the *Perry County* case?

Mr. PHILLIPS. Well, not directly related, but Albert Turner's brother, Edward Turner, is married to my father's blood sister.

Senator DENTON. Well, you painted a picture of interesting nature and degree in Perry County, one which you have stated is national in scope, one which has become more and more familiar to me, and I want to make sure I understand it just for my own personal orientation.

The old leaders of the activist civil rights organizations, and you can tell me which ones, but to some degree some of them, are tending to carry forward an effort to either establish or maintain a control which is manifest through elected officials who are responsive to their leadership.

On the other side, there are some black—and I would like you to give me an idea of the size of that proportion in Perry County—who feel that while insufficient progress has been made in the achievement of equality of opportunity for blacks in areas such as education, social opportunities, perhaps business opportunities, they have noted a great deal of progress and wish to place more emphasis on taking advantage of that progress, working toward economic advance with a deemphasis of the racial and controlled political unity maintained by those who were previously engaged in leading an entirely valid civil rights struggle, or one which, in its purpose and generally in its means, was correct.

If that is not a fair statement, would you please correct it to what you think would be?

Mr. PHILLIPS. I would say that is a fair statement.

Senator DENTON. Do you have an affidavit from a Mr. Reese Billingslea?

Mr. PHILLIPS. Sir, yes; I have an affidavit, but I forwarded it to somebody.

Senator DENTON. All right. We have it in the committee and we just——

Mr PHILLIPS. I do not have a copy of it, no.

Senator DENTON. Without objection, I will put that affidavit by Billingslea in the record.

We will ask you to read it for the record, if you will. This is from Reese Billingslea, a candidate in the election to which you referred, and if you will read and then make any comments you care to make about it.

Mr PHILLIPS. Senator?

Senator DENTON. Yes?

Mr. PHILLIPS. The affidavit of John Anderson was forwarded to me; this is the wrong one.

Senator DENTON. Wrong one.

Senator HEFLIN. Do you have an extra copy of the Billingslea affidavit?

Senator DENTON. I will let you use this one, Senator Heflin—you and Senator East—until I can find a copy.

If you would, would you read it out loud for the record?

Mr. PHILLIPS. Yes, sir. It is an affidavit, State of Alabama, Perry County.

> Before me, the undersigned authority, personally appeared Reese Billingslea, who, being duly sworn, deposes and says as follows.
>
> My name is Reese Billingslea and I am 56 years of age. I am a resident of Marion, Perry County, Alabama, and I am employed by Mutual Savings Life Insurance Company. I have been so employed for the past 37 years.
>
> I was elected as County Commissioner in 1976 and have been reelected two times since that time. I was one of the first black candidates elected in Perry County, Alabama. In September of 1984, I was a candidate for reelection in the Democratic primary. I was opposed by Cecil Howard, who is a black man, who was endorsed by the Perry County Civic League.
>
> During the campaign, I was approached by many of my supporters, who informed me that the blatant falsehoods being promoted by my political opposition—I was informed that my opposition had stated publicly that they would do anything to get rid of me.

> After consulting with people throughout the county, I became convinced that the concerted, well-organized effort was being made to steal the election from me through the absentee ballot box.
>
> Many of my closest supporters were receiving absentee ballots for which they had not applied, and were being assisted in voting said ballots. They were told to wait until November to vote for Reese,

which was the general election.

> I was personally aware of the inordinant number of requests for absentee ballots coming to the office of the absentee election manager,

who happens to be Ms. Mary Auburtin, the circuit clerk of Perry County.

Senator DENTON. That is an aside by you, is that correct?

Mr. PHILLIPS. Pardon, sir?

Senator DENTON. What you just said is not——

Mr. PHILLIPS. Right, exactly.

Senator DENTON. OK.

Mr. PHILLIPS [reading]:

> And I obtained copies of the lists of the absentee ballot requests, a public record, by paying 25 cents per copy. I endeavored to politically counter the fraud by mailing literature to every person on that list, which I was fortunately able to do.
>
> Late in the week of August 30th, I contacted the Civil Rights Division, United States Department of Justice, in Washington, D. C., to ask for the assistance and direction in assuring a fair and impartial election.
>
> I specifically requested assistance from the United States Department of Justice because that agency is viewed in Perry County as being highly professional and impartial, and a prior grand jury had also requested their help.
>
> I was referred to United States Attorney's Office, Southern Division, State of Alabama, by the Civil Rights Division, and I thereupon contacted our local district attorney, Roy Johnson, and inquired as to whether he was acquainted with the Honorable Jeff Sessions.
>
> At this point in time, the district attorney telephoned Jeff Sessions and introduced me to him. I spoke with him and requested his assistance. From that point, the investigation commenced which led to the indictment and trial of Albert Turner, Evelyn Turner and Spencer Hogue.
>
> From everything that I was aware, Mr. Sessions and the United States Attorney's Office handled the investigation with the highest professionalism.
>
> This is a true and correct statement, to the best of my knowledge and belief. Signed, Reese Billingslea, the 12th of March, 1986.

Senator DENTON. Mr. Billingslea gave you an affidavit in lieu of his coming here.

Mr. PHILLIPS. Yes.

Senator DENTON. So that is why I thought it appropriate that you read it.

Before turning it over, I will just conclude this questioning round from me with a question of asking what your opinion is respecting Mr. Jefferson B. Sessions' racial sensitivies, fairness, objectivity, qualifications, and suitability for appointment as a judge of the U.S. District Court for the Southern District of Alabama.

Mr. PHILLIPS. Well, dealing with Mr. Sessions from a professional perspective, it is my opinion that he is fit to serve on the Federal bench. Now, as far as these racial slurs about the Klan, the ACLU, NAACP, let me just say this: A person who is an adult and a professional and who is in the company of others, and those others are professionals—a person ought to be able to derive from a certain person's demeanor and the context in which he or she says things whether or not it is a joke or whether or not that that person's state of mind intends for that statement to be malicious, OK.

I make racial jokes, but they are not malicious; they are not wanton. There is a difference. Everybody does. If I was being nominated for Federal district judge and somebody said that about me, I would say the same thing that Jeff said, OK.

You know, you have to look at a person's demeanor, the context in which he says things, and you have to be able to determine—and there were lawyers in his office when that was said, you know; they know what wantonness and maliciousness is. So why be ridiculous about it?

Senator DENTON. Thank you, Mr. Phillips.

Senator Heflin.

Senator HEFLIN. Mr. Phillips, you, of course, are State assistant district attorney; Mr. Roy Johnson is the district attorney. How many counties does Mr. Johnson have?

Mr. PHILLIPS. The Fourth Judicial Circuit is the largest geographical circuit in the State of Alabama. He has five counties, 6,000 square miles.

Senator HEFLIN. What is it?

Mr. PHILLIPS. The counties?

Senator HEFLIN. The counties. Dallas, Wilcox, Marion, Hale, Bibb.

Mr. PHILLIPS. Bibb, Hale, Perry, Dallas, and Wilcox counties.

Senator HEFLIN. Now, are you the only assistant district attorney——

Mr. PHILLIPS. I must correct you, sir. I just finished law school and I sat for the bar last month and I am pending results.

Senator HEFLIN. You have just recently become a lawyer?

Mr. PHILLIPS. Yes.

Senator HEFLIN. So in other words, you were not a lawyer when this was——

Mr. PHILLIPS. I was investigator during the voter rights trial.

Senator HEFLIN. Well, I misunderstood; I thought you had been a lawyer.

Were you going to law school at that time?

Mr. PHILLIPS. Exactly. I have since graduated from law school.

Senator HEFLIN. Were you going to Jones or something in Montgomery?

Mr. PHILLIPS. Miles School of Law.

Senator HEFLIN. What?

Mr. PHILLIPS. Miles School of Law in Birmingham.

Senator HEFLIN. Miles?

Mr. PHILLIPS. Yes.

Senator HEFLIN. All right, sir. Are you now an assistant district attorney?

Mr. PHILLIPS. I am assistant to Roy Johnson—legal assistant to Roy Johnson.

Senator HEFLIN. But are you listed as one of his attorneys or as an assistant?

Mr. PHILLIPS. No; the bar results are pending. I took the bar last month.

Senator HEFLIN. In other words, you have not passed yet.

Mr. PHILLIPS. Right, exactly.

Senator DENTON. He said his title was legal assistant to the gentleman.

Senator **Heflin**. All right, sir. I do not know whether you are knowledgeable on this or not. There had been some charge that in regard to this that instead of going to Mobile that the activities pertaining to this trial, some aspect of it, should have been in Selma, which was—how far is Selma from Marion, Perry County?

Mr. **Phillips**. It is approximately 26 miles, going east.

Senator **Heflin**. Mobile is 160 miles away?

Mr. **Phillips**. Yes, sir.

Senator **Heflin**. I am not sure whether it is the charge that the jury should have been struck or whether the grand jury should have met in Selma as opposed to Mobile. I suppose maybe grand juries frequently meet in the largest city.

But was there any question about whether the grand jury was to meet in Mobile or Selma?

Mr. **Phillips**. The answer would be yes. I do not know the logistics of that, but that was being recommended that the grand jury meet in Selma.

Senator **Heflin**. In other words, you do not know the details of the——

Mr. **Phillips**. I do not know the logistics of that.

Senator **Heflin**. Well, I will inquire of somebody else about that.

You, of course, have stated about Mr. Dobynes' statement and his affidavit that, in pertinent part, to put it in proper perspective to ask the questions—and to do it, I will read it.

> When I arrived at the Marion departure site in early October, I saw a bus surrounded by six Alabama State troopers, three or four Marion city policemen, and about nine FBI agents and four State game wardens. It looked like an armed camp.

Now, is that correct or incorrect, or how is it incorrect?

Mr. **Phillips**. I would like to read the—that is incorrect; I was there. But I would like to read the statement of Chief John Anderson, who is the chief of police of the city of Marion, AL.

"On October 22, 1984, my"—I am on the fourth paragraph on the first page.

Senator **Denton**. Without objection, we will enter into the record this statement and the previous affidavit.

[Affidavits follow:]

Affidavit of O.C. DOBYNES
on the Nomination of
Jefferson Beauregard Sessions, III
for Appointment to the
United States District Court
for the Southern District of Alabama

I, O.C. DOBYNES, being duly sworn, depose and say as follows:

1. I am a resident of Perry County, Alabama. I am a retired school teacher and a pastor for two small churches in rural West Alabama. I have lived in Perry County all my life and have been deeply involved in county affairs for over 30 years.

2. I ran for a seat on the Perry County Commission on September 4, 1984. I lost the election; my opponent, Reverend Ward, was elected to the Commission.

3. A few days after the election, a former student of mine, Mary Pryor, told me that the FBI had brought her absentee ballot to her house and that it had been changed. She told me that my name had been crossed out and Mr. Ward's name had an "X" by it. She said she had voted for me and asked who I had given her ballot to. I told her I mailed it at the U.S. Post Office in Marion to the Circuit Clerk's Office and didn't know the ballot got changed.

4. Later that month, LaVonne Phillips, investigator with the District Attorney's office and an FBI agent came to my home to question me about the absentee balloting. I told them I would only talk in a court of law, and the FBI agent said he would have me subpoenaed.

5. When the subpoena arrived, an attached instruction sheet announced that all the witnesses from Marion would be transported to the federal courthouse in Mobile by chartered bus. I was also instructed to bring personal items for an overnight stay.

6. When I arrived at the Marion departure site in early October, I saw a bus surrounded by six Alabama State Troopers, three or four Marion city policemen, about nine FBI agents, and four state game wardens. It looked like an an armed camp. The

street around the courthouse was blocked off and about eight officers stood on different corners with their guns drawn. I learned that law enforcement officers surrounded the city while the buses were being loaded with witnesses. It was one of the most imposing and chaotic scenes I have ever witnessed. Approximately 25 people - many of them in their seventies, eighties, and even nineties, most ailing and all frightened - were loaded onto a bus under the watchful eye of more than 20 armed police officers. Two marked police cars escorted the bus on its nearly five hour journey to Mobile.

7. During the trip I questioned the need for armed guards. The response of the authorities (LaVonne Phillips of the D.A.'s office) aboard the bus was to accuse me of coaching the witnesses.

8. The bus trip took its toll on some of the more feeble witnesses. Ninety-three-year-old Red Jackson had a stroke soon after his return to Marion. Another elderly witness suffered a heart attack.

9. The morning after our arrival, District Attorney Johnson and FBI Agent Garry Clem asked me to ride over to the courthouse with them. After getting in the car Agent Clem informed me that Mary Pryor told him she had given me her absentee ballot. I replied that it was true that I had mailed it at the Marion post office. Agent Clem said that he personally saw Albert Turner put Mrs. Pryor's ballot in the mail the night before the election. When I said that was impossible, Agent Clem replied that if I was going to say that to the grand jury I may as well go home. He then changed the subject and said he had heard I was coaching the witnesses on the bus to Mobile and said that he "would not tolerate that."

10. I was the last witness to be called that afternoon. The federal attorney asked me what I knew about the "voting fraud" and Mary Pryor's absentee ballot? Could I explain how Mrs. Pryor's ballot had been changed? Had I given the ballot to Albert Turner? I told them that I mailed Mrs. Pryor's ballot, that she had told me she had voted for him, and that I believed

her. The way it appeared to me was that Johnson and Clem definitely didn't want me to testify after they found out what my testimony was going to be.

11. After the bus trip back to Perry County, on at least three occasions the FBI came to my home accompanied by LaVonne Phillips and tried to get me to change my testimony. I told them I would not change my grand jury testimony because it was the truth.

12. In the 1984 Democratic primary, Reese Billingsley ran against Setzer Howard for a seat on the Perry County Commission. Mr. Billingsley was not supported by the Perry County Civic League. I was present when Ms. Emma Sims received her absentee ballot in the mail from the Circuit Clerk, Mary Auburtin. Ms. Auburtin is white. She is responsible for supervising the entire absentee balloting process in Perry County. When Ms. Sims opened the envelope it contained, in addition to her absentee ballot, the campaign literature of Reese Billingsley, the opponent of the candidate supported by the Civic League.

13. I have personally been told by Mrs. Pryor that she would never vote again as a result of the federal investigation. I have also heard a number of other black people say they would not go to the polls anymore because of what they have seen of the way the witnesses in this case were treated.

Under penalty of perjury,

O.C Dobynes
O.C. DOBYNES

Sworn to and subscribed before
me this 19 day of March, 1986.

Valerie Prather
NOTARY PUBLIC

My commission expires March 31, 1989

STATE OF ALABAMA)
)
PERRY COUNTY)

AFFIDAVIT

Before me, Sabrah H. Agee, the undersigned Authority, came the Affiant, John Anderson, Chief of Police, City of Marion, Perry County, Alabama, and deposes and says as follows:

My name is John Anderson. I am thirty-nine years of age, and a lifetime resident of Marion, Perry County, Alabama. I have served the City of Marion as its Police Chief for the past fifteen years, and was serving in this capacity during the Vote Fraud Investigation in 1984.

On October 21, 1984, Special Agent Leslie Sue of the Federal Bureau of Investigation contacted my office and informed me that he had received information that there was going to be an attempt to prevent the Federal Grand Jury witnesses from going to Mobile to testify before the Grand Jury concerning the Perry County Vote Fraud Investigation. When I received this in formation, it was decided that the police department would provide whatever security necessary to protect these witnesses from harrassment.

On October 22, 1984, my department supplied two officers, Lt. Don Caver, and Patrolman Gabriel Jones, as security while the witnesses were boarding the bus bound for Mobile. Also on the scene was Conservation Officer Mike Nichols, who was assigned to Perry County at that time, and who worked out of the Marion Police Department. Three F. B. I. Agents were also present at the loading site. One was the aforementioned Special Agent Leslie Sue, and two were agents from Montgomery. I do not know the names of the Montgomery Agents. Capt. George Jones, of the Alabama State Troopers Office, came to Marion, but waited inside the Marion Police Department, along with three other Troopers. The bus loading zone was in a public parking lot, next to the U. S. Post Office, and it was directly across the street from the Perry County Courthouse. After all the Grand Jury witnesses were loaded onto the bus, the Alabama State Troopers drove over to the loading site and waited for the bus to leave for Mobile. To the best of my knowledge, there were no other Law Enforcement Officers assigned to the aforementioned detail, and there were no other Law Enforcement Officers present at the loading site. The only uniformed Law Enforcement personnel in the immediate vicinity of the bus were Lt. Caver, and Officer Jones, of the Marion Police Department. There were no streets blocked, and at no time were any weapons displayed other than the pistols belonging to the uniformed officers at the site, and these pistols were in the officer's holsters at all times.

The above statement is true and correct to the best of my knowlege and belief.

John W. Anderson
John Anderson, Chief of Police
Marion, Alabama

Sworn and subscribed before me on this the 17th day of March, 1986.

Sabrah H. Agee
Sabrah H. Agee, Notary Public
State of Alabama at Large

Senator DENTON. Go ahead, please.

Mr. PHILLIPS [reading]:

> On October 22, 1984, my department supplied two officers, Lt. Don Caver, who is white, and Patrolman Gabriel Jones, who is black, as security while the witnesses were boarding the bus bound for Mobile.
>
> Also on the scene was conservation officer Mike Nichols, who was assigned to Perry County at that time and who worked out of the Marion Police Department. Three FBI agents were also present at the loading site.
>
> One of the aforementioned special agents, Leslie Soo——

and the two were agents from the city of Montgomery. Also, Captain Jones was there, Alabama State troopers, and one person who was deleted, who was not mentioned in this statement, was a black State trooper by the name of Billy Smith was there, and that was all.

Senator HEFLIN. How many is that?

Mr. PHILLIPS. I did not count, sir; I just read the statement.

Senator HEFLIN. I count from you say there would be nine.

Mr. PHILLIPS. OK, nine.

Senator DENTON. If my colleague will defer, it does note that some of them waited inside the Marion Police Department. In fact——

Mr. PHILLIPS. Captain Jones did.

Senator DENTON. And three other troopers, and I believe they were an escort for the bus.

Senator HEFLIN. Well, how many were there altogether, about 12 police officers there at the time?

Mr. PHILLIPS. I do not think it was 12, sir. Well, let us count them.

Senator HEFLIN. Well, I understand from Senator Denton they were in addition to the nine that I counted.

Mr. PHILLIPS. Well, there were some police officers that were inside the Marion Police Department that were not on the scene when the bus was loaded with the witnesses.

Senator HEFLIN. All right, sir. Well, are you saying that it did not look like an armed camp?

Mr. PHILLIPS. No.

Senator HEFLIN. Now, he says the street across from the courthouse was blocked off and about eight officers stood on different corners with their guns drawn. Was there any of that that went on?

Mr. PHILLIPS. That is ridiculous. No.

Senator HEFLIN [reading]:

> I learned that law enforcement officers surrounded the city while the buses were being loaded with witnesses. It was one of the most imposing and chaotic scenes I have ever witnessed.
>
> Approximately 25 people, many of them in their seventies, eighties, or even nineties, almost all ailing and all frightened, were loaded into a bus under the watchful eye of more than 20 armed police officers. Two marked police cars escorted the bus on this nearly 5-hour journey to Mobile.

Mr. PHILLIPS. That is incorrect, sir.

Senator HEFLIN [reading]:

> During the trip, I questioned the need for the armed guards. The response of the authorities, Mr. Lavon Phillips,

meaning you,

of the D.A.'s office, aboard the bus was to accuse me of coaching the witnesses.

You have explained that previously.

The bus trip took its toll on some of the more feeble witnesses. Ninety-three-year-old Red Jackson had a stroke soon after his return to Marion, and another elderly witness suffered a heart attack.

Is that correct or incorrect?

Mr. PHILLIPS. Sir, there is no—I have no personal knowledge of that. All I know is that on the way going down, Mr. Jackson—and who was the other person, sir?

Senator HEFLIN. It says, "Ninety-three-year-old Red Jackson had a stroke soon after his return to Marion, and another elderly witness"—it does not name him—"suffered a heart attack."

Mr. PHILLIPS. That is not true.

Senator HEFLIN. It does not say when.

Mr. PHILLIPS. That is not true.

Senator HEFLIN. All right, sir. Now, you were talking about the absentee ballots and the various things about them. About nursing homes, is it legal or illegal to use absentee ballots for people who are confined to nursing homes?

Mr. PHILLIPS. It is legal.

Senator HEFLIN. Legal.

Mr. PHILLIPS. I mean, what I was saying, Senator Heflin, that people that were sitting around the courthouse—young people, younger than I am; I am 26 years old—was voted absentee. You know, that is hard to explain. You know, they do not have any basis to vote absentee. The polls are just around the corner.

Senator HEFLIN. The purpose of an absentee ballot is either you cannot get to the polls or you are absent from the State, as I understand it, or your county.

Mr. PHILLIPS. Also, let me mention one thing that I forgot to mention. When I was an investigator in 1982, Mr. Turner, who was picking up some of these ballots—there were not any charges in 1982; I am not charging Mr. Turner with any guilt, but Mr. Turner was a candidate in 1982

Section 17, Alabama Criminal Code, sternly spells out that no candidate is to solicit, pick up, or even—you are not supposed to even touch an absentee ballot if you are a candidate. It is illegal.

Do you want to look at some of this I have, some of these ballots I have here?

Senator HEFLIN. Well, they have been made a part of the record, and I see there was not any alteration in my name. [Laughter.]

That is all I have.

Senator DENTON. Senator East.

Senator EAST. For the sake of time, Mr. Chairman, I will let you continue. Thank you.

Senator DENTON. Well, I do not know which media representatives are here or not. I know that there were many reports the first day of the unmitigated allegations. I believe that many in the media have had a great deal to do with favorable development of civil rights in this country, and I will particularly cite what I have seen in the Washington Post in the way of the fairness with respect to distributions of photographs, considering the racial makeup of the population in the area.

But I have to say as a Senator that I am disappointed that in spite of reassurances made that "I will hang in there with you all day today, Jerry, like I did before," that there is not a crowd here to hear the extenuation, the development, the truth, of this matter.

And I only have some hope that there will be some revelation through the press of what happened. I know there are some staffers here, but I have got to recount what happened the last time I had a security and terrorism hearing, which was very typical.

I chaired a hearing on Libya's support of terrorism and the activities of the radical entente. I am proud of that hearing. It, like other hearings, has been published all over the world It is in universities and colleges all over the world.

And yet, though the hearing lasted many hours, the only mention in the Washington Post was about Senator Specter having been here and making an opening statement and Senator Leahy having been here and making an opening statement; no mention of anything in the hearing whatever, and none of my colleagues are going to take the trouble to read the transcript of that hearing.

I find myself in a difficult bind here in respect to trying to develop knowledge in this body about terrorism, and I challenge anyone to say that I have approached it in anything but a moderate, balanced search for truth with respect to terrorism.

I just hope that the liberal media will follow the real meaning of the term liberal in presenting what has happened here today, because I do not know any other way that we are going to get the awareness among the Senators on the floor of what happened here today.

I want to thank LaVon Phillips for showing the courage to come and testify, and ask him if he is still receiving any threats regarding his testimony or his activities in the trial.

Mr. PHILLIPS. Well, no, sir, not at this particular time, but like I once mentioned, if you work in a law enforcement capacity, and especially a district attorney's office, if that evidence is prima facie, you are going to have to put aside your political convictions.

And once a professional, whether he is in the legal profession, medicine, whatever it may be, starts compromising his position, all of a sudden you wake up one morning and you are corrupt. You may not even know it, but you are, you know, and that is just the way I look at it now.

You know, it does not bother me, but I guess that is life.

Senator DENTON. Thank you again, Mr. Phillips. You may remain where you are or excuse yourself.

Mr. Larry D. Thompson, of Atlanta, GA, regarding this hearing. Sir, do you have an opening statement?

STATEMENT OF LARRY D. THOMPSON

Mr. THOMPSON. Yes; I do, Senator.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today. I am presently a member of the Atlanta, GA, law firm of King & Spaulding. I became a member of the firm in February of this year. Prior to that time, I served, since September 1982, as U.S. attorney for the northern district of Georgia, with headquarters in Atlanta, GA.

I was nominated by President Reagan for the position of U.S. attorney in August 1982, and was confirmed by the Senate the same month.

I am here, Mr. Chairman, because my friend, Jeff Sessions, asked me to appear on his behalf, and I do so without hesitation or reservation. I have known Jeff since October 1982.

I clearly remember our first meeting, which occurred in a crowded motel room in Biloxi, MS, with 10 other U.S. attorneys from throughout the Southeast. The occasion of our meeting was the formation of the Southeastern Organized Crime Drug Enforcement Task Force.

President Reagan then had recently announced the formation of 12 regional drug task forces to combat drug smuggling and drug trafficking. Atlanta was designated as the headquarters of the Southeastern task force and I was given the responsibility of establishing the task force and coordinating its activities in the States of Alabama, Georgia, North Carolina, South Carolina, and Tennessee.

The task force consisted of Federal prosecutors from the various U.S. attorneys' office, as well as agents from the FBI, DEA, IRS, Customs Service, and the Bureau of Alcohol, Tobacco and Firearms.

For a new U.S. attorney, the establishment of the task force clearly represented a challenge. I asked for, and received, the support of all U.S. attorneys in the region in this endeavor, and, Senator East, including the three U.S. attorneys in North Carolina; I received great support from them.

However, the support I received from Jeff was enthusiastic and complete. At my request, and sometimes on rather short notice, Jeff would travel outside his district to attend a meeting or a conference dealing with the task force, dealing with task force operations or cases. He was one of the first U.S. attorneys to have the task force fully operational in his district.

And throughout the usual difficulties incurred in complex, sensitive multiagency and multidistrict investigations, Jeff was completely supportive of my leadership of the task force. He was a loyal colleague.

However, my relationship with Jeff goes beyond that of a professional one. During my tenure as U.S. attorney, Jeff and I attended several meetings and conferences together. We have had many conversations. On two occasions, we roomed together while on travel status in order to cut our expenses.

I believe I got to know Jeff Sessions as a man, and state to you in my place today that Jeff is a good man and an honest man, untainted by any form of prejudice.

I have read some of the statements and testimony in opposition to Jeff's nomination. I do not dismiss them lightly. They pain me, but they do not comport with what I know about Jeff.

I am a member of the National Bar Association. While I do not agree with all the views of the NBA, I respect the organization and acknowledge the important role NBA members have played in nurturing my professional career.

I have worked very hard over the years for the Atlanta NAACP in connection with its educational program for minority youth, and

I understand the essential role the NAACP has played in making it possible for me to function professionally the way I do today.

I take my appearance before you gentlemen seriously. I was born to a poor family in Hannibal, MO. My father was a railroad laborer. Unfortunately, I have experienced racism in my life.

Yet, I know Jeff Sessions not as a symbol, not just as a colleague, but as a man and a friend, and I admire him, for he has revealed to me some of the unfortunate circumstances in his early years that he has had to overcome in order to function in our pluralistic society.

I have lived in Missouri, Michigan, and Georgia, and in the process I have met many people, including many lawyers. There are many I could not support for a position as important as that of a U.S. district court judge. I could not support someone who I believed was deficient in ability or defective in character.

What better way is there to judge someone than to know him? I know Jeff. He will serve our nation well as a U.S. district court judge. And most importantly for your consideration today, he will do so in a completely fair and impartial manner.

Thank you for your attention, and I will be happy to answer any questions you may have.

Senator DENTON. Thank you, Mr. Thompson. I must note that Mr. Hebert did not know that well, was not that close with him, and yet he recounted some conversations which seemed to have suffered from the same kind of flawed memory that required him to withdraw what he previously said about the Conecuh County situation.

And I think your testimony—a man who knows him, who has roomed with him—is very important in trying to place in perspective his qualifications for the bench.

I saw some members of the media flinch when I made my previous remarks. I have got to say I do not mean that all media are liberal, and liberal is not a bad word. I just mean that it is very difficult for Senators to get to know what happens if the only thing they hear are the allegations being printed on the first day and then no follow-up and no Senators. It is very difficult.

I appreciate the fact that most of them over there now are from the State of Alabama, but I cannot help mentioning that the article I referred to in the Washington Post was an AP dispatch, from which they chopped off the first part and just left the second part, which left me and the substance of the hearing out.

That has been going on for 5½ years up here, and the Post is what these gentlemen read out there on the floor every morning. So it is a problem. It is a problem with freedom, it is a problem with justice. When you cannot get a letter to the editor of that paper published, which I have tried to do ever since the first day, you have got to wonder what freedom of the press really means. Freedom for whom?

Mr. Thompson, you and Mr. Sessions were close and often discussed your offices and how they operated. How did you feel about his ability to personally try so many cases?

Mr. THOMPSON. My impression with Jeff—and that is based on many discussions with him regarding all kinds of matters, particularly in connection with our involvement in the Southeastern Organized Drug Task Force, and these were cases in which we had common defendants or commonalities involved in the investigation—is that he is an exceptional prosecutor.

He is hard-working, he is diligent, and I had the utmost faith in him in dealing with him on some of the very sensitive and complex drug cases that we discussed.

Senator DENTON. Are there many other U.S. attorneys in the country who have tried 17 cases before a jury, including 1 that lasted 7 weeks, 1 over 4 weeks, and 2 lasting 2 weeks?

Mr. THOMPSON. It is very difficult for a U.S. attorney who has to administer an office, and make many different policy decisions, and administrative decisions, and investigative decisions to try cases.

I have only been able to try two cases during my tenure as U.S. attorney, and I admire Jeff for being able to try as many cases as he did, especially the complex public official corruption one that I understand he tried in Mobile.

Senator DENTON. I am not a lawyer and it is hard for me to relate. So it is particularly unusual that he would try the vast majority of these 17 cases alone—that is, without a cocounsel?

Mr. THOMPSON. That is admirable.

Senator DENTON. Have you reached an opinion as to Mr. Sessions' ideals with respect to his suitability for office? Is he committed to being a good public servant and has he displayed judicial temperament suitable to his nomination?

Mr. THOMPSON. Senator, in my opinion, based on some very frank and candid conversations that Jeff and I have had, Jeff was an exceptional public servant as U.S. attorney and he would be an exceptional public servant as a U.S. district court judge.

We have had several—I do not want to repeat myself, but we have had several candid and frank conversations about our backgrounds and I think that Jeff is the kind of person that would serve as a judge—he would be impartial, completely impartial, and fair, and I do not think that his character is tainted by any prejudice against anyone.

Senator DENTON. Thank you, Mr. Thompson.

Senator Heflin.

Senator HEFLIN. Mr. Thompson, I think you shed some light on the issue of Mr. Sessions. You are a black man and you all roomed together.

Mr. THOMPSON. We did, on two occasions.

Senator HEFLIN. Have you noticed any racial prejudice coming from him toward you or any other black man?

Mr. THOMPSON. Absolutely not, Senator Heflin, and I think the thing that has impressed me about Jeff was that I was a new U.S. attorney in 1982. Jeff and my other colleagues throughout the southeastern region had served longer than I and I was recently appointed.

The President announced the formation of this drug task force, which covered five Southeastern States, and I had to step in, sort of an interloper, would be the best way to describe it, and try to not only get that task force organized in our region, but to take control over it.

And it was a tough job, and Jeff was—long before he was nominated for the judgeship, Jeff was one of my strong supporters among the U.S. attorneys in our region. He stood behind me, he did everything I asked him to do, and I greatly appreciate that.

As I said in my prepared statement, he was a loyal colleague.

Senator **Heflin**. You were appointed U.S. attorney in 1982?

Mr. **Thompson**. Yes, sir.

Senator **Heflin**. Are you a Republican?

Mr. **Thompson**. Yes, sir.

Senator **Heflin**. That is all.

Senator **Denton**. Do you have any questions, Senator East?

Senator **East**. No.

Senator **Denton**. Mr. Eddie Menton, of the Mobile Press Register; would you care to make an opening statement, Mr. Menton?

STATEMENT OF EDDIE MENTON

Mr. **Menton**. Mr. Chairman and members of the committee, I would just make a brief statement. When you asked me if I would testify here today, I think you wanted me to tell this committee whether or not there had been a perception in Mobile, based on my experience in the newspaper business as city editor of the newspaper and supervising reporters.

I think you were asking, had we heard this or had we gotten the feeling that there was this perception in Mobile, and I would say that I have never heard lawyers or judges or anybody make these statements about Jeff Sessions that have been made up here.

I have been a friend of Jeff Sessions for about 14 years, so I have not only a professional relationship, but also a friendship with Mr. Sessions, and I have never heard him make a racial slur or any of that sort of thing.

Senator **Denton**. Could you give us an idea of the general opinion of Jeff Sessions in the Mobile community? Any reason to believe that he is prejudiced or that he has a reputation for racial insensitivity?

Mr. **Menton**. No, sir. I would say that he does not have that reputation at all. The prosecutors in Mobile, both the State prosecutor and the Federal prosecutors, have enjoyed a rather unique situation, in that they have been prosecuting some very serious white-collar crimes.

And I think that the people of Mobile feel very good about the prosecutors in Mobile on both sides, and particularly in the U.S. attorney's office, where they took on the case-fixing trial and put two judges in prison for fixing cases, and a city commissioner.

Senator **Denton**. What is your area of reporting responsibility, your personal area?

Mr. **Menton**. I supervise the city reporters, which includes the court systems and the investigating agencies.

Senator **Denton**. How about in the past? What have you been writing about? I am trying to find out if you can establish the degree of contact you have with government officials, members of the business community and the general public in Mobile.

Mr. **Menton**. Yes, sir. I was in sports for about 10 years at the newspaper. I was business editor for 3 years and I have been city editor for nearly 3 years now.

Senator DENTON. What is the relationship of yours to Bill Menton?

Mr. MENTON. That is my father.

Senator DENTON. What offices has he held and does he now hold?

Mr. MENTON. He is a State senator in the State of Alabama.

Senator DENTON. Was he not a sheriff, too, before that?

Mr. MENTON. He was a police chief.

Senator DENTON. Police chief?

Mr. MENTON. Yes.

Senator DENTON. What is his party?

Mr. MENTON. Pardon me?

Senator DENTON. What party is he, Democrat or Republican?

Mr. MENTON. He is a Democrat.

Senator DENTON. Senator Heflin.

Senator HEFLIN. I might say that he is a mighty fine Democrat, too. [Laughter.]

Mr. MENTON. Thank you, Senator. I will tell him you said that.

Senator HEFLIN. And I must say that your newspaper has certain Republican leanings. [Laughter.]

Would you say that that is an accurate depiction?

Mr. MENTON. Senator, I have nothing to do with the editorial page, but I think I would agree with that.

Senator HEFLIN. Mr. Menton, we are delighted to see you and we appreciate your coming. I have no questions.

Mr. MENTON. Thank you, Senator.

Senator DENTON. In spite of the paper's leaning, your dad was elected to both offices, and I admire him very much.

Senator HEFLIN. They support a Democrat now and then. They supported Bill and me. [Laughter.]

Senator DENTON. Yes, sir.

Senator East, do you have any questions?

Senator EAST. No questions.

Senator DENTON. William Kimbrough, former U.S. attorney, southern district of Alabama.

STATEMENT OF WILLIAM KIMBROUGH, JR.

Do you have an opening statement, Mr. Kimbrough?

Mr. KIMBROUGH. Mr. Chairman and members of the committee, my name is W.A. Kimbrough, Jr. I appear here in behalf of the confirmation of Jeff Sessions as U.S. district court judge.

I am a lawyer; I practice in Mobile and Chatom, AL. I practice with the firm of Turner, Underdunk & Kimbrough. By way of information, I am a Democrat and have served as an assistant U.S. attorney from 1962 to 1965 in Mobile, and as the U.S. attorney from 1977 to 1981 during the Carter administration.

I appear here specifically for the purpose of responding to the suggestion that Jeff Sessions is a racist or does not have the temperment to deal with people fairly that come before the court because of their race, creed, or any other reason.

I have known Jeff professionally since 1975. When I became the U.S. attorney, he remained in that office as an assistant U.S. attorney for about 2 years. I do not know him socially to any particular degree. He is not a good friend of mine in the sense that we pal around.

I am concerned that the charge of racism has been leveled at him based on a recent case involving the voting situation in a rural county where the issue of control of that county is up for grabs, where there are strong political feelings on both sides.

The people who have come here have testified that they feel that they were mistreated, and I am sure they do feel that way. But in any voting situation in any case involving a man's ballot or an election, there are always strong feelings, just as there are always strong feelings in a boundary line dispute.

The question is whether or not the decision to prosecute was motivated by some improper motive. The Justice Department, the Civil Rights Division, has the overall responsibility to oversee civil rights prosecutions, and particularly those involved in the voting rights area.

I told Jeff earlier that if he had called me, I would have told him to stay out of that bed of trouble, and I think I was right. There are a number of reasons for it. Jeff did not feel that way. Jeff felt that that was a case that he should try and that the office should proceed with, and they did so. They did not win the case.

Quite often, in the South you do not win civil rights cases. That is not to say they should not be brought. I personally tried a number of civil rights cases involving police brutality or alleged police brutality and I do not believe I won one of them.

I do not apologize to anyone for having brought the case. There was probable cause to believe that somebody's rights had been abused and that they had been abused by somebody in authority.

You bring the case because the case needs to be brought because somebody needs to understand that the United States is looking at the situation. The Justice Department, in this particular situation in Perry County, obviously had a great deal of information. They have their own sources of information in all counties, including Perry County.

You know, I do not remember any election that ever came up while I was in office either as an assistant or subsequently as the U.S. attorney when I did not receive some complaint from Perry County.

Perry County is a politically active county where people politic hard, and you cannot take politics out of politics. Now, the question is whether or not that case, which has been relitigated in this spectrum for the last 2 days, and random comments which any of us can make, buttress the allegation that he is a racist.

I told somebody from the staff on this committee that the basic problem that I have with Jeff is that he is a Republican conservative. But I thought when you had a Republican conservative President, he had a right to submit to the Senate those persons who he felt represented his interests to serve as U.S. attorney and on the Federal bench.

Jeff Sessions will serve well on the bench; he will treat people fairly. And I speak simply in protest to conclusions that suggest that you can second-guess or look with hindsight at a particular litigation and draw the inference that this was done for racial purposes. I do not believe it was.

I might disagree with Mr. Sessions on whether to have done it or not. I was not there. The question is, when you consider the overall picture and the oversight function of the civil rights division in Washington, whether or not you may say that he was racially motivated in bringing that litigation, and I do not believe that he was. I would urge his confirmation.

Senator DENTON. Thank you, Mr. Kimbrough.

Mr. Kimbrough, I do not mean to be cute with this question, but have you ever in your life ever voted for a Republican for any office, and I say that with great admiration for the kind of statement you just made?

Mr. KIMBROUGH. I have abstained, but I have accepted the lesser of the evils. [Laughter.]

Senator DENTON. Is that sort of the definition of a yellow dog Democrat?

Mr. KIMBROUGH. Yes, sir. I am a yellow dog Democrat.

Senator DENTON. Thank you.

Would you say from your experience in the U.S. attorney's office and your association with Mr. Figures that he might have some difficulty in maintaining his cool, maybe, about racial cases that come up?

I have been told that there were times when there was an adverse Supreme Court decision from his point of view, and I do not disagree with what he did, nor do I have any criticism of the NAACP.

As he said, you cannot take politics out of politics. If they think that is the way to go and Dr. Gilliard is wrong, they have a right to go that way; it is a free country. But would you say that Mr. Figures has had a rather tough time keeping his cool occasionally or relating to people when that issue is up and might tend to be overly suspicious, considering the earnestness of his own drive, and so on?

Mr. KIMBROUGH. Senator, I hired Thomas Figures as an assistant U.S. attorney. I think he is an outstanding lawyer. He did an outstanding job as an assistant in my office.

I think Thomas became disaffected when the Republicans came into office and probably would have been better served to leave, as I did. I would not wish to serve in a Republican administration. I do not have anything against you; I just do not want to work for you. [Laughter.]

And I believe in all honesty that he may have had some difficulty there.

Senator DENTON. Well, how would you define that? In other words, he might find—and I am not trying to discredit him because were I he, I might be precisely the same way if I were in his exact position.

He might, on occasion, find sinister motive in a perfectly innocent statement or action, particularly of the type you know I am referring to?

Mr. KIMBROUGH. He might, just as I might.

Senator DENTON. Have you ever seen anything or heard anything critical of Mr. Sessions' civil rights record until the *Perry County* case?

Mr. KIMBROUGH. No, sir.

Senator DENTON. I think you have answered three or four questions here that I have just gone through in what you have said.

If Mr. Sessions was correct in prosecuting the *Perry County* case, do you have any impression as to what effect this rigorous attack on him might have on other prosecutors? Could it be a form of intimidation and an effort to stop similar prosecutions?

And I am going to ask you as a yellow dog Democrat, considering the fact that there is a Republican President, a Republican Senator for the first time from that State—and obviously, Mr. Meese is the Republican-appointed Attorney General—with charges against them, if Jeff were not to stay there and he would appoint another U.S. attorney, do you think he would be a little bit goosey about getting into a civil rights case like this, maybe beyond the point of prudence, or rather the point of the interest of justice, because he does not want to get an unfair allegation against him and a bad reputation?

Mr. KIMBROUGH. I do not know. I do not have any opinion on that, Senator; I really do not. It would not bother me.

Senator DENTON. In summary, you do believe Mr. Sessions is qualified and has a judicial temperament that does not disqualify him?

Mr. KIMBROUGH. Yes; I do.

Senator DENTON. Thank you, Mr. Kimbrough.

Senator Heflin.

Senator HEFLIN. I have no questions.

Senator DENTON. Senator East.

Senator EAST. No questions.

Senator HEFLIN. We have got to be out of here at 4?

Senator DENTON. Yes, sir; we are supposed to have been out of here at 4, and I want to thank this panel. Senator Thurmond, our chairman and the President pro tempore of the Senate, has asked that we adjourn today in time to permit this room to be organized for another function. I announced that this morning.

I agreed to finish the day no later than 4, 4:10, and that time is here. We have two panels from which we have yet to hear and I would ask——

Senator HEFLIN. I have just been told that Senator Biden was on his way over here. I suppose they would like us to wait until he gets here.

Senator DENTON. I wish to defer to Senator Biden. We were supposed to adjourn at 4, as previously announced. I am doing this at the order of the chairman of the committee, not at my own choice. We can bring anyone back.

The staff person reports that he wants to know what the chairman wishes to propound as the future time for the hearing, and we certainly need to defer to him on that as the senior minority ranking member.

Maybe we can get the information on the phone. Are any of his staffers still left? I can give the proposal on the telephone to him.

Mr. KIMBROUGH. May we be excused?

Senator DENTON. Yes; the panel may be excused, and thank you very much.

[Pause.]

Senator DENTON. In order that people may relax, we will just take a recess. Hopefully, he will arrive within 5 minutes, but the intention of the chairman is that the hearing will resume with the remaining 10 witnesses tomorrow at 2 p.m.

It was our understanding and the understanding of the staff of Senator Thurmond that that had already been agreed to by Senator Biden, but we will defer ourselves and wait. Those who are waiting to testify, I am sure would like know if that is definite or not, so I would suggest that they wait around.

Otherwise, the hearing is in recess until we hear from Senator Biden.

[A brief recess was taken.]

Senator **Denton**. If I can have your attention for just a moment, Senator Biden is reported to be on the way. If I did not announce it previously, the intention is to adjourn until 2 p.m., Thursday, March 20, and I have just heard from his staffer that he intends to concur with that because he did not want it held over until next week.

But that is an opinion and I am still waiting for him, and it is tomorrow at 2 p.m. that we intend to reconvene.

We will stand in recess until he gets here.

[A brief recess was taken.]

Senator **Denton**. The hearing will resume for the following announcement. The ranking minority member, my distinguished colleague from Delaware, Senator Joseph Biden, concurs that we will adjourn the hearing now and resume the hearing at 2 p.m., Thursday, March 20.

Senator **Biden**. That is tomorrow.

Senator **Denton**. That is tomorrow, in this room.

We stand adjourned.

[Whereupon, at 4:30 p.m., the committee was adjourned.]

NOMINATION OF JEFFERSON B. SESSIONS III, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

THURSDAY, MARCH 20, 1986

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to recess, at 2:14 p.m., in room 226, Dirksen Senate Office Building, Hon. Jeremiah Denton (acting chairman) presiding.

Others present: Senators McConnell, Kennedy, Heflin, Simon, DeConcini, and East.

Staff present: Duke Short, chief investigator; Frank Klonoski, investigator, and Ruth Lucas, investigative clerk.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator **Denton**. Good afternoon. This hearing will come to order.

We had planned to have two panels today. We also just learned that Congressman Conyers and State senator Mitchell from Michigan and Maryland, respectively, who could not appear yesterday, will appear today.

I just learned that they are voting at the moment on the contra issue and will be permitted to interrupt, as is the custom, to give their testimony when they arrive.

In the meantime, we will call the first panel—and I will ask them to remain standing as they approach the table: The Honorable Hank Sanders, Alabama State senator, Montgomery, AL; Rev. O.C. Dobynes, Perry County, AL; Deval L. Patrick, assistant counsel, Legal Defense Fund, New York, NY; and Thomas Figures, attorney, Figures, Ludgood & Figures, Mobile, AL.

Gentlemen, if you will raise your right hands. Do you swear that the testimony you will give today before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses answer in the affirmative.]

Please be seated.

Mr. Sanders, you were the first one in order on this list, so I will ask Alabama State senator, the Honorable Hank Sanders, if he has an opening statement.

STATEMENTS OF A PANEL CONSISTING OF HON. HANK SANDERS, ALABAMA STATE SENATOR, MONTGOMERY, AL; REV. O.C. DOBYNES, PERRY COUNTY, AL; DEVAL L. PATRICK, ASSISTANT COUNSEL, LEGAL DEFENSE FUND, NEW YORK, NY; THOMAS FIGURES, ATTORNEY, FIGURES, LUDGOOD & FIGURES, MOBILE, AL

Mr. Sanders. Mr. Chairman, if you would permit, I would like to yield to Mr. Figures to go first—with your permission.

Senator Denton. I have no objection to that. We will call on Attorney Thomas Figures of Figures, Ludgood & Figures, Mobile, AL.

Mr. Figures. Mr. Chairman, members of the committee, I appreciate this opportunity to testify before this committee regarding the nomination of Jefferson B. Sessions for the position of U.S. district judge for the southern district of Alabama.

Mr. Chairman, I would like to preface my testimony about this nomination with a brief statement about a related matter. Since the possibility first arose that Mr. Sessions might be nominated for judgeship, I felt that whatever I might have to say on this matter should be said to this committee and not to the press.

As a former prosecutor, I am well aware of the potentially unfair impact of premature publicity. Over the past 9 months, I have repeatedly declined to discuss my testimony with the press. I have not issued press releases; I have declined invitations to be interviewed by reporters from Washington and Alabama; and I have made it clear to other individuals who oppose this nomination that I did not want to talk with the press.

During the past 10 days, I have supplied the committee with two prepared statements. One was provided prior to last week's hearing. A supplemental statement, which was typed yesterday morning, was given to the committee staff midday yesterday. And 1 or 2 hours later, at the suggestion of the staff, copies were placed on the press table.

Because the committee recessed yesterday before I was able to testify, portions of my supplemental statement appeared in today's newspapers, even though the committee had not had a chance to question me about that statement.

That was a development which I, nor the committee, intended, but one which yesterday's necessary adjournment apparently made inevitable.

Now, with respect to my statement that was furnished yesterday, in the interests of time I will not read the entire statement. But there are some matters addressed in the statement which I would like to read into the record.

I served as an Assistant U.S. Attorney in the district—that is the southern district of Alabama—from September 1978 to July 1985.

During the last 4 years that I held that position, Mr. Sessions was the U.S. attorney. During those years Mr. Sessions and I had frequent discussions regarding matters in the office, and we tried or worked together on a number of cases.

I would like to address the first portion of my testimony to a number of statements that Mr. Sessions made regarding civil rights or racial issues.

At the hearing last week, Mr. Sessions offered a number of accounts and explanations of several of these statements. In order to provide a background against which to evaluate that testimony, I would like to describe the events which I saw and heard in the U.S. Attorney's Office itself.

First, I was not present when Mr. Sessions made to Mr. Hebert the remarks described last week regarding the NAACP, the ACLU, and the National Council of Churches. However, Mr. Sessions made a very similar remark to me on a separate occasion.

On the day in question, Mr. Sessions came into my office just as I was reading a newspaper account of some then-recent action of the NAACP. I casually mentioned that development to Mr. Sessions. Mr. Sessions, in response, stated that he believed the NAACP, the Southern Christian Leadership Conference, Operation Push, and the National Council of Churches were all un-American organizations teaching anti-American values.

This statement clearly was not intended as a joke. Mr. Sessions was extremely grave as he spoke, and he raised his voice. Mr. Sessions did not refer to foreign policy or any other specific action. But he spoke as a man gravely concerned by the threat which he believed these organizations posed to American values.

He chose his words carefully, distinguishing, quote, un-American, unquote, activities from, quote, subversive, close quote, activities; and making clear that he regarded the groups as un-American but not subversive.

At no time in this exchange did Mr. Sessions refer to the opinions of third parties regarding the NAACP, SCLC, Push, or the Council of Churches.

He was without question describing his personal and manifestly deeply felt position.

Second, I was present when Mr. Sessions made the remark described last week regarding the Ku Klux Klan, stating that he thought its members were OK until he learned that they smoked marijuana.

Whatever Mr. Sessions view of the Klan may be today, the remark that he made during the *Donald* case, indicating that he only objected to the Klan because of drug use by its members, was not made in a joking manner. I certainly took it as a serious matter. Mr. Kowalski on the other hand apparently did not take this remark as seriously as I did.

The cartoon which the committee circulated yesterday reflected my view that Mr. Sessions' remark was serious as well as my feeling that his remark was entirely inappropriate. The original cartoon was a criticism of President Reagan's attitude toward the Civil Rights Commission. I added a new caption to change the cartoon into a criticism of Mr. Sessions' remark about the Klan.

The fact that I, like the original author of the cartoon, expressed that criticism in the form of a cartoon, does not mean that either of us did not regard the problem at issue as a serious or important one.

As a result of a disagreement between Mr. Sessions and myself regarding the handling of a particular case, Mr. Sessions said, referring to me, quote, he must think this is New York; this is Alabama; close quote.

In his testimony last week, Mr. Sessions acknowledged having made this remark. Mr. Sessions testified that he thought he had made the remark in connection with the *Sammy Murray* case. That was a false claim indictment which the Government ultimately dismissed because of the appearance that Mr. Murray's supervisors had sought the indictment as part of a vendetta against Mr. Murray.

Prior to the dismissal of that indictment Mr. Sessions and I had a number of discussions during which I urged that it would be a serious injustice to continue the case, while Mr. Sessions initially resisted dismissing the matter.

My own best recollection is that Mr. Sessions made the remark about New York and Alabama not regarding the *Murray* case, but during the course of a discussion about whether to pursue a criminal civil rights investigation.

The exact context in which this remark was made, however, is not critical. I thought this remark inappropriate when I heard it, as I do today, because it appears to rest on the assumption that the standards of conduct and justice appropriate for a U.S. attorney in New York and elsewhere in this country somehow do not apply in Alabama.

Reasonable attorneys can and will disagree about the handling of particular cases within the Justice Department, but the laws and constitutional guarantees Government attorneys enforce should be enforced in an evenhanded manner throughout the Nation.

Federal laws and constitutional provisions that would protect a Sammy Murray or anyone else in New York are just as applicable and should be implemented with equal vigor in Alabama and any other State in the Union.

I have focused my testimony on civil rights cases and activities because this is the area about which the committee is particularly concerned.

In all fairness to Mr. Sessions, however, I should make clear that the problems which existed in the area of civil rights were not present in other aspects of my case assignments.

Except in criminal civil rights cases, Mr. Sessions deferred to my recommendations regarding whether to pursue cases, and never withdrew a case assignment because he disagreed with my recommendation.

During the period that Mr. Sessions has served as U.S. attorney, his office has made substantial progress in rooting out political corruption in the city of Mobile. The *Hogan* and *Sullivan* case, in which Mr. Sessions was personally involved, was a major step toward reducing bribes and case-fixing in the State court system.

Let me say in conclusion, Mr. Chairman, that I take no satisfaction in testifying on this matter. This nomination has prompted often bitter disagreement among lawyers and others in southern Alabama, and any sensible person might prefer to stay out of that controversy.

As you heard yesterday, several of the State judges before whom I practice, and a number of the lawyers with whom I have to work, feel very strongly about Mr. Sessions and differ with my opinion.

But I, like the witnesses who have supported Mr. Sessions, have an obligation to bring before the committee material evidence that bears on whether or not the nominee should be confirmed.

I believe my obligation to do so is particularly clear. Over the last 4 years I have dealt with Mr. Sessions day in and day out regarding not just one or two prosecutions, but scores of cases. I have had discussions with Mr. Sessions at which others simply were not present, if I failed to testify about such discussions, the committee would have no other way of obtaining that information.

In passing on Mr. Sessions' nomination, the committee should of course consider his entire record, the good as well as the bad.

Based on my own experience with and knowledge regarding Mr. Sessions, however, I am convinced that the committee should disapprove his nomination.

The statements that he has made fall far short of the high standards that should be required of a Federal judge and are inconsistent with the sense of fairness shared by most Alabamians, white as well as black, laymen as well as lawyers.

Thank you. I would like to submit the rest of my statement for the record.

[The following was received for the record:]

Statement of
Thomas H. Figures, Esquire
Figures, Ludgood & Figures
# of Mobile, Alabama
on the Nomination of
Jefferson Beauregard Sessions, III

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to tesfify before the Committee today regarding the nomination of Jefferson B. Sessions, III for a federal district judgeship in the Southern District of Alabama.

I am presently am attorney with the Mobile firm of Figures, Ludgood and Figures. Prior to the middle of 1975 I worked as an assistant U.S. Attorney in the office of the U.S. Attorney in Mobile, Alabama. I was originally appointed to that position during the Carter Administration period. Both before and after Mr. Sessions became U.S. Attorney. I handled a wide variety of cases in that office. During the years that Mr. Sessions was U.S. Attorney, I had extensive contact with him regarding these cases, as well as concerning other matters in the office.

During the course of my work with Mr. Sessions, he expressed with frankness his views regarding both civil rights and private organizations which work to promote enforcement of federal civil rights laws. Mr. Sessions made clear that he regarded with considerable disfavor the civil rights organizations that have for years played a vital role in winning enactment of federal civil rights laws, and that are reknowned for their successful efforts to enforce those laws.

Mr. Sessions also indicated that he strongly preferred that his office not become involved in prosecuting criminal or civil actions to enforce federal civil rights laws. On a number of occasions he sought to discourage or impede the investigation, filing or prosecution of such actions, and did so under circumstances that made clear his opposition was based on his attitude towards the civil rights laws themselves, and not on the merits of the particular cases involved.

STATEMENT OF THOMAS FIGURES
BEFORE THE SENATE JUDICIARY COMMITTEE
CONCERNING THE NOMINATION OF
JEFFERSON B. SESSIONS

I appreciate this opportunity to testify before this Committee regarding the nomination of Jefferson B. Sessions for the position of United States District Judge for the Southern District of Alabama.

I served as an Assistant United States Attorney in that District from September 1978 to July 1985. During the last four years that I held that position Mr. Sessions was the U.S. Attorney. During those years Mr. Sessions and I had frequent discussions regarding matters in the office, and we tried or worked together on a number of cases.

I would like to address the first portion of my testimony to a number of statements that Mr. Sessions made regarding civil rights or racial issues. At the hearing last week Mr. Sessions offered a number of accounts and explanations of several of these statements.

In order to provide a background against which to evaluate that testimony, I would like to describe the events which I saw and heard in the U.S. Attorney's office itself.

First, I was not present when Mr. Sessions made to Mr. Hebert the remarks described last week regarding the NAACP, the ACLU, and the National Council of Churches. However, Mr. Sessions made a very similar remark to me on a separate occasion. On the day in question Mr. Sessions came into my office just as I was reading a newspaper account of some then recent action of the NAACP. I casually mentioned that development to Mr. Sessions. Mr. Sessions, in response, stated that he believed the NAACP, the Southern Christian Leadership Conference, Operation PUSH and the National Council of Churches were all un-American organizations teaching Anti-American values.

This statement clearly was not intended as a joke. Mr. Sessions was extremely grave as he spoke, and he raised his voice. Mr. Sessions did not refer to foreign policy or any other specific action, but he spoke as a man gravely concerned by the threat which he believed these organizations posed to American values. He chose his words carefully, distinguishing "un-American" activities from "subversive" activities, and making clear that he regarded the groups as un-American but not subversive. At no time in this exchange did Mr. Sessions refer to the opinions of third parties regarding the NAACP, SCLC, PUSH or the Council of Churches; he was without question describing his personal, and manifestly deeply felt, position.

Second, I was present when Mr. Sessions made the remark described last week regarding the Ku Klux Klan, stating that he thought its members were OK until he learned that they smoked marijuana. Whatever Mr. Sessions' view of the Klan may be today, the remark that he made during the Donald case, indicating that he only objected to the Klan because of drug use by its members, was not made in a joking matter. I certainly took it as a serious statement; Mr. Kowalski, on the other hand apparently did not take this remark as seriously as I did.

Third, as a result of a disagreement between Mr. Sessions and myself regarding the handling of a particular case, Mr. Sessions said, referring to me, "He must think he is in New York; this is Alabama." In his testimony last week Mr. Sessions acknowledged having made this remark. Mr. Sessions testified he thought he had made the remark in connection with the Sammy Murry case. That was a false claim indictment which the government ultimately dismissed because the government concluded Mr. Murry's supervisors had sought the indictment as part of a vendetta against Mr. Murry. Prior to the dismissal of that indictment Mr. Sessions and I had a number of discussions, during which I urged that it would be a serious injustice to continue the case, while Mr. Sessions initially resisted dismissing the matter. My own best recollection is that Mr. Sessions made the remark about New York and Alabama, not regarding the Murry case, but during the course of a discussion about whether to pursue a criminal civil rights violation.

The exact context in which this remark was made, however, is not critical. I thought this remark inappropriate when I heard it, as I do today, because it appears to rest on the assumption that the standards of conduct and justice appropriate for a United States Attorney in New York or elsewhere in the country somehow do not apply in Alabama. Reasonable attorneys can and will disagree about the handling of particular cases within the Justice Department, but the laws and constitutional guarantees government attorneys enforce should be enforced in an even-handed manner throughout the nation. The federal laws and constitutional provisions that would protect a Sammy Murry or anyone else in New York are just as applicable, and should be implemented with equal vigor, in Alabama or any other state in the Union.

Fourth, the Committee asked Mr. Sessions last week if there had been an incident in which Mr. Sessions had admonished me to be careful what I said to "white folks." As Mr. Sessions noted, the incident in question occurred following a discussion that took place between myself and one of the white secretaries in the office. The secretary made a personal remark to me that I regarded as in extremely poor taste, and I made clear by my response that I thought her remark was offensive. Subsequently Mr. Sessions called me into his office and indicated he felt I had been unduly harsh with the secretary. If Mr. Sessions believed I had been too harsh with the secretary, he certainly acted appropriately in raising the matter with me. While I thought then that I had acted properly, I can understand that Mr. Sessions might in good faith have concluded otherwise.

But regardless of whether or not I had reprimanded the secretary too sharply, the language which Mr. Sessions used was entirely inappropriate. Mr. Sessions admonished me to "be careful what you say to white folks." Had Mr. Sessions merely urged me to be careful what I said to "folks," that admonition would have been quite reasonable. But that was not the language that he used. I realize, on the other hand, that Mr. Sessions' remark may not have been premeditated. There was a period in our own lifetimes when blacks were regularly admonished to be particularly polite or deferential, and a remark of that sort may just have slipped out inadvertently.

The Committee asked a number of questions last week regarding Mr. Sessions' role in the handling of criminal civil rights cases. In evaluating the testimony on this issue it is important to bear in mind the context in which a U.S. Attorney acts. The U.S. Attorney does not have unlimited discretion, or even final authority, to decide whether to pursue a criminal civil rights case. These cases involve three different participants, the Assistant U.S. Attorney who supervises and evaluates the investigation, the U.S. Attorney who supervises that Assistant, and the Criminal Section of the Civil Rights Division in Washington, which makes the final decision whether to pursue or close a particular case. Although a U.S. Attorney has the authority to disagree with the recommendations of the Assistant responsible for a case, final decisions are in any event made in Washington. On a day-to-day basis the most important impact a U.S. Attorney has on whether a case is pursued or closed is a result, first, of his choice as to the Assistant to be given responsibility for the case and, second, of informal suggestions the U.S. Attorney gives to the Assistant regarding the handling of a case.

Mr. Sessions noted in his testimony that, although the handling of criminal civil rights cases was delegated to me, there were a number of instances in which pending investigations were referred to other Aassistants instead. I can confirm that there were indeed such departures from the established rule regarding the assignment of these cases. I have, however, no personal knowledge of why that occurred. In response to a question regarding how he dealt with criminal civil rights cases that had been initially assigned to other Assistants, Mr. Sessions stated that he brought the files to me and told me I could make the final decision regarding the office's recommendation.

That is an accurate description of one of the discussions

I had with Mr. Sessions regarding these cases. But in a number of these cases there were in fact two discussions. In those instances Mr. Sessions first brought to me the file prior to the time that these cases had been submitted to Washington, described the nature of the investigation that had occurred, and suggested that I recommend to Washington that the investigation be closed and that the government decline to pursue the case. When I indicated I favored further investigation, Mr. Sessions took back the file: each case was ultimately forwarded to Washington with the recommendation of another Assistant urging that the investigation be closed. Whether that Assistant had made that recommendation before or after my initial discussion with Mr. Sessions I do not know; so far as I am aware the Justice Department refused to close a number of these cases, and sent them back to our office with a request for an additional investigation. It was as this point that Mr. Sessions brought the cases to me and, for the first time, offered to give me full responsibility for the cases.

Senator Heflin asked Mr. Sessions whether he had actively obstructed the investigation of the murder of Michael Donald, and Mr. Sessions said he had not. Mr. Sessions statement was literally correct; Mr. Sessions never issued an order forbidding me to pursue the case, or attempted to override the traditional authority which I exercised in the day-to-day handling of this case. On the other hand, in the early stages of the case, Mr. Sessions did attempt to persuade me to discontinue pursuit of the case. On various occasions he remarked, with regard to the investigation, that the case was a waste of time, that it wasn't going anywhere, that I should spend more time on other things, and that, if the perpetrators were found, I would not be assigned to try the case. All of these statements were well calculated to induce me to drop the case; on the other hand, none of them amounted to a direct order that I do so. After the case went to the grand jury, however, and it became increasingly apparent that we were going to break the case, Mr. Sessions' attitude changed. He stopped suggesting that the investigation be closed, and he increasingly expressed interest in and ultimately support for the prosecution.

Finally, in connection with the Hodge case, Mr. Sessions voiced a more general objection to the prosecution of cases of this sort. The Hodge case had originally been assigned to Gloria Bedwell. After the case was returned to us by the Justice Department for further investigation, Mr. Sessions brought the case to me. We had a very spirited discussion regarding how the Hodge case should then be handled; in the course of that argument, Mr. Sessions threw the file on a table, and remarked, "I wish I could decline on all of them." It was clear to me at that time that that remark was made in anger, triggered by the serious differences in our views about the case. Mr. Sessions did not make such a remark to me on any other occasion, and he did not direct me then, or at any other time, to in fact systematically decline all civil rights cases.

I have focused my testimony on civil rights cases and activities because this is the area about which the Committee is particularly concerned. In all fairness to Mr. Sessions, however, I should make clear that the problems that existed in the area of civil rights were not present in other aspects of my case assignments. Except in criminal civil rights cases, Mr. Sessions deferred to my recommendations regarding whether to pursue cases, and never withdrew a case assignment because he disagreed with my recommendation. During the period that Mr. Sessions has served as United States Attorney, his office has made substantial progress in rooting out political corruption in the City of Mobile. The Hogan and Sullivan cases, in which Mr. Sessions was personally involved, was a major step towards reducing bribes and case fixing in the state court system.

Senator **Simon**. Mr. Chairman, if I could have your consent, I am going to have to leave for another meeting.

I would like to ask just one more question of the witness, if there is no objection?

Senator **Denton**. Without objection.

Senator **Simon**. Would it be fair to characterize Mr. Sessions as an able, decent person but simply not sensitive in the area of race?

Mr. **Figures**. Senator Simon, I believe that the statements and actions of Mr. Sessions regarding race, and regarding civil rights, impact tremendously on whether he is decent. And for that reason I could not conclude, based on those statements and those actions, that he has the sufficient perspective and integrity to serve as a Federal judge.

Senator **Simon**. I thank you, Mr. Chairman.

Senator **Denton**. Now, Mr. Figures, you mentioned when you began that it was inevitable that your testimony would be used.

It is interesting that it was used before you testified. I say that as no reflection upon you or the committee. I don't think anybody intended that that be done.

I bring it up because in the CBS News, which was selected to reflect what happened at yesterday's hearing, it was my information that they went back to two incidents which occurred last Thursday at the hearing in which most of the people in the Senate had to read that set of incidents rather than what happened yesterday; and they only used one from yesterday's hearing.

Is it true that shortly after Mr. Sessions became U.S. attorney he told you that he wanted you to continue to handle civil rights cases?

Mr. **Figures**. Yes, sir.

Senator **Denton**. Further, that he specifically told you that he encouraged you to come to him to discuss any problems that you saw in the civil rights area because he wanted to ensure that those cases were properly handled?

Mr. **Figures**. Yes, sir, he said that. And that course of action took place up to a certain point in time.

Senator **Denton**. Is it true that Mr. Sessions had an open-door policy for anyone in the office who wished to discuss a case or matter with him?

Mr. **Figures**. He had an open-door policy with respect to discussion of cases.

Insofar as matters are concerned, I recall early in Mr. Sessions' tenure going in to discuss with him a couple of matters that arose from situations where I felt that I had been offended or not treated in accord with my professionalism, which I tried to maintain. And on those occasions Mr. Sessions, for some reason, tried to convince me that I was the one who caused the situation in the first place, and that there was nothing that he was going to do about it.

After talking with him with respect to those situations I thereafter declined to discuss anything with him other than matters pertaining to cases, because my judgment was that I was not going to obtain a fair shake with respect to criticism of acts directed toward me which I thought unprofessional and riddled with prejudice.

Senator DENTON. Mr. Figures, have you ever asked Mr. Sessions—ever asked Mr. Sessions—to prosecute any civil rights case or any other case, for that matter, and been refused?

Mr. FIGURES. Have I ever asked him to prosecute one?

Senator, insofar as the *Michael Donald* case, which is addressed in my statement, Mr. Sessions never gave me a direct order to stop working on that case.

But early in the investigation, he made suggestions which had the effect of impressing me that he did not want that particular case around. He would say things like, why are you wasting time on the case? Why do you not find something better to do?

And on one occasion I overheard him tell another assistant that even if the culprits were identified in that case, that I would never try it.

I accepted those remarks——

Senator DENTON. Who was the assistant who overheard that?

Mr. FIGURES. I overheard——

Senator DENTON. Oh, you overheard him telling an assistant.

Would you tell us who that assistant was?

Mr. FIGURES. Virginia Granade.

I took those statements in cumulative as a very strong suggestion that, one, he did not want the case there; and two, he did not want me working on it.

Senator DENTON. He would certainly be putting himself in great jeopardy, I would think, knowingly, if he did that.

Mr. Figures, how long have you known Mr. Sessions?

Mr. FIGURES. I did not know him prior to his becoming U.S. attorney.

Senator DENTON. Have you had dealings with him on matters other than those occurring in the working environment?

Mr. FIGURES. I think that I may have gone to a couple of forums where Mr. Sessions spoke.

Senator DENTON. In other words, did you have a social relationship with Mr. Sessions?

Mr. FIGURES. No, sir, I had no social relationship with him.

Senator DENTON. Did you have a social relationship with anyone in the office?

Mr. FIGURES. I believe that early I had lunch and occasionally drinks with people in the office. But I would not describe it as a very close personal relationship.

Senator DENTON. During the Carter administration, how would you describe your relationship with Mr. Kimbrough, the predecessor of Mr. Sessions?

Mr. FIGURES. I felt closer than my relationship with Mr. Sessions.

Senator DENTON. And Mr. Kimbrough, did he meet your standards for racial sensitivity?

Mr. FIGURES. Senator, I felt that there were a couple of occasions when Mr. Kimbrough indicated some problems in that area. But overall, I thought his position on matters in that area was better than that of Mr. Sessions.

Senator DENTON. Yesterday Mr. Hancock and Mr. Hebert, two of several Department of Justice witnesses who testified in this confirmation hearing, corrected an earlier testimony and deposition in which they accused Mr. Sessions of blocking a civil rights investigation. They said that they had faulty recall, and that it was Mr. Kimbrough, not Mr. Sessions, who terminated the FBI investigation in a particular county.

Knowing that—and Mr. Sessions was falsely accused in this case—do you believe that your recollection on the events which you have described in your statement, particularly the one in which you said that was your best recollection. Do you believe that your recollection on the events you have described is absolutely accurate?

Mr. FIGURES. Well, Senator Denton, my statement does not address the Conecuh or Dallas County matters at all because I have no question——

Senator DENTON. I mean the other events to which you did testify?

Mr. FIGURES. Oh, I stand by the contents of my statement with respect to everything that is in it, Senator.

Senator DENTON. You do not believe there is any possibility you might be confused or even wrong in some of your recollections and descriptions?

Mr. FIGURES. The statement represents my best recollection. I have reviewed it several times. And I do not think there is anything in it, Senator, that I am not willing to stand by.

Senator DENTON. I ask, Mr. Figures, because this committee has received several gratuitous and not wholly objective reports on the Sessions nomination from groups with a clear interest in the outcome of the Sessions nomination. And in analyzing these reports, it is clear that you have been a major source of information for these groups.

Will you tell committee how you came to be involved in this confirmation process, beginning with your first contact on the Sessions nomination?

Senator DECONCINI. Mr. Chairman, if I may? Can the chairman identify the groups he is making reference to? Maybe they have already been identified before I came. If so, I can look at the record. But just so I can follow the testimony.

Senator DENTON. One was the anonymous report which I was privileged to see only the night before the first hearing was scheduled, which contained a great deal of information, the source of which was alleged to be Mr. Figures. The second was the National Bar Association report.

Senator DECONCINI. We are talking about one anonymous report and another by the National Bar Association report that attribute the information to Mr. Figures?

Senator DENTON. Yes.

Senator DeConcini. Thank you, Mr. Chairman. That is all.

Senator DENTON. And by name, it was not attributed to him. It is only by inference, by virtue of the type of information——

Senator DECONCINI. Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator DeConcini.

Mr. FIGURES. If I recall the question correctly, my best recollection is, subsequent to my resignation from the U.S. attorney's office, I——

Senator **Denton**. When was that again, Mr. Figures? I have forgotten.

Mr. **Figures**. My resignation was effective July 3, 1985.

Senator **Denton**. July 3, 1985?

Mr. **Figures**. Yes, sir.

I received a telephone call while recuperating from some surgery that I had performed from Fred Gray, who is the president of the National Bar Association. If I am not mistaken, Mr. Gray indicated to me the National Bar Association was seriously concerned about Mr. Sessions nomination. He inquired as to whether, by virtue of my working in that office, I could provide any input to an investigation that they were contemplating conducting.

I told him that I would be happy to provide whatever information I had. And he gave me the names and telephone numbers of other individuals connected with the National Bar Association whom he suggested that I contact, or would contact me. I have forgotten.

Senator **Denton**. Is there any other incident in which you had contacts giving information relative to Mr. Sessions' nomination?

Mr. **Figures**. I attempted to give information to Roland Nachman.

Senator **Denton**. To who?

Mr. **Figures**. Mr. Roland Nachman, who conducted the American Bar Association investigation. For some reason, I found my attempts to provide that information to Mr. Nachman on several occasions met with resistance insofar as those things that apparently Mr. Nachman did not believe or desire to hear.

So I believe that the next major contact source that I had, subsequent to the one with Mr. Gray, was the one with—no, I am mistaken. Mr. Nachman contacted me before I left the U.S. attorney's office.

So I think those are the two major contact sources.

Senator **Denton**. Did you ever write Mr. Nachman a letter?

Mr. **Figures**. I do not recall having written Mr. Nachman a letter, Senator.

Senator **Denton**. Mr. Figures, in your second prepared statement, you describe at the bottom of the page—or bottom of page 1, a very specific recollection of a comment that you attribute to Mr. Sessions regarding the NAACP, SCLC, Operation Push, the National Council of Churches.

You begin by saying, quote, on the day in question, Mr. Sessions came into my office just as I was reading a newspaper account of some then recent action of the NAACP, unquote.

To the best of your recollection, when did that happen, Mr. Figures?

Mr. **Figures**. It happened in October 1982.

Senator **Denton**. Any idea of the time of day?

Mr. **Figures**. Early in the day, shortly after I came in.

Senator **Denton**. And what was the news story to which you are referring regarding the NAACP?

Mr. **Figures**. I am not completely certain about that, Senator.

My best recollection is that it was a story pertaining to the NAACP challenging some position pertaining to the President's stand on affirmative action, I believe.

That is my best recollection, but I am not completely sure about it.

Senator DENTON. Did you call Mr. Sessions into your office to tell him about this event, or did he just walk in there?

Mr. FIGURES. He walked in.

Senator DENTON. Did you know at the time—did you expect his reaction——

Mr. FIGURES. No, sir.

Senator DENTON [continuing]. To be emphatic?

Mr. FIGURES. I did not at that time.

Senator DENTON. Do you recall what you said to elicit such an emphatic response from him?

Mr. FIGURES. Yes, sir. He came in and he may have asked me what I was reading about or I may have told him what I was reading about. And I think I said, really in jest, well, there goes that subversive NAACP again. Because that was early in my relationship with Mr. Sessions, and had I known that he held these positions, I would not have even jested about it. So I said, well, there goes that subversive NAACP again. And when I said that, his demeanor changed. He assumed a very serious look on his face. His face blushed. He became very stoic. And he said, very harshly and very clearly: Well, I don't think they are subversive, but I think organizations like the National Council of Churches, NAACP, SCLC, and Push, and my best recollection is he said the rest of them, are un-American organizations with antitraditional American values.

Senator DENTON. Mr. Figures, a major factor in this case has been the interpretation of what Mr. Sessions said in jest and what he said seriously and whether it was racially divided or not.

You have just announced that you said, there goes that subversive NAACP again. And you maintain that you made that in jest. I can believe that. I can believe that some other black people whom I have heard testify might use an unflattering word with respect to the activities of the NAACP in Alabama political. We heard one yesterday. We heard one yesterday who I think characterized Perry County as a very hot political spot which agreed with Mr. Kimbrough's opinion, and Mobile is not dissimilar to that.

And for you to raise that in jest would subject you later to questioning were you to have kept your job and been nominated for something which required a hearing.

So you said, there goes that subversive NAACP again, and he responded immediately by getting somewhat hot. And you stated what he said.

Would you state again, as closely as you can recall, what his words were, with your having introduced the word subversive?

Mr. FIGURES. He said that organizations like the National Council of Churches, NAACP, SCLC, and Push, and I believe he said, the rest of them, but I am not sure about that so I am not going to attribute that to him, are un-American organizations with antitraditional American values.

Senator DENTON. Anti-American what? Excuse me, I just didn't get the last part.

Mr. FIGURES. With antitraditional American values.

Senator DENTON. Antitraditional American values.

Well, that is different from anti-American, is it not?

Mr. **Figures**. It is a matter of interpretation, Senator.

Senator **Denton**. Well, I would admit that these statements that he made are a matter of interpretation; a critically important matter of interpretation.

Senator **DeConcini**. Mr. Chairman?

Senator **Denton**. I will not interrupt your questions—go ahead.

Senator **DeConcini**. No, I misunderstood. I only want for the record to be clear: Did he say that they are anti-American, or did he say they are anti-American and antitraditional American values?

Mr. **Figures**. He said that they were un-American organizations with antitraditional American values.

Senator **DeConcini**. I did not mean to interrupt you. I just did not understand.

Thank you.

Senator **Denton**. Now, I will recall that Mr. Sessions did not agree with that version of what he said.

Did Mr. Sessions—had Mr. Sessions ever grouped such diverse organizations as these together before in any comment that he had made to you? Had he ever made a flatout unsolicited statement to you condemning such organizations and grouping them together as being un-American?

Mr. **Figures**. No.

Senator **Denton**. Do you think it is possible that by virtue of having made a challenging and perhaps irritating provocative remark to him, that you may have elicited a remark that was in a similar vein?

Mr. **Figures**. Senator, I did not consider it a challenging remark. It was early in our relationship.

Senator **Denton**. But the whole pattern has been how others regard your words.

Mr. **Figures**. Well, had I known that Mr. Sessions held these views regarding such organizations, I would not have said it.

Frankly——

Senator **Denton**. So working with him for all those years, you did not know that he held those views?

Mr. **Figures**. No, this was relatively early in our professional relationship.

Senator **Denton**. But after that remark——

Mr. **Figures**. I made sure that I said nothing else that would provoke anything like that.

Senator **Denton**. For 3 years after you heard that remark, you remained on the job with him without any apparent serious reservation. Mr. Kimbrough said that he retired or resigned and urged you to because he was a yellow dog Democrat and he did not see how he could objectively work for a Republican, so he just quit and he advised you to do the same.

But you hung in there, even after that remark?

Mr. **Figures**. Well, Mr. Kimbrough's remark obviously came prior to Mr. Sessions' remark pertaining to these matters.

At the time that the administrations changed, Senator, Attorney General William French Smith continued a policy that had been implemented during the Carter administration, saying that there would not be wholesale removal of assistants solely because of political reasons.

I took that at face value. There were two assistants who came in under Carter. And I felt that if the other assistant could stay, without any pressure to leave, then I felt that I could stay without any pressure to leave.

Additionally, there was a much more overriding purpose. At the time that Mr. Sessions came in, there were two cases to which I was assigned that I wanted to see through to some type of meaningful conclusion. One was the Michael Donald matter. I made a commitment to myself to stay there until such time as I saw Tiger Knowles [phonetic] sentenced. Tiger Knowles was one of the major participants in the crime.

The second professional objective that I had was to try to bring a civil case that I was working on, a class action civil case which challenged FHA loan servicing regulations in Alabama, to some type of settlement fashion. The case had been around for a long time, and those were my two professional objectives for staying.

Senator KENNEDY. Mr. Chairman, could we get some idea of how we are going to deal with the time of the other witnesses on this?

Senator DENTON. Yes, sir. They put him first, and he is the key guy.

The chairman, when he was questioning the first time, went on for quite some time before he continued. And in view of the selectivity with which I have seen this portrayed, and the lack of exposure to the Senators on this side except for Mr. Heflin and Mr. DeConcini for a short time, yesterday, I am very anxious about the impression to my colleagues being accurate.

So I hope you will indulge me to go through at least one rationale here, which is about the comments on which, in some people's minds, Mr. Sessions has already been convicted, before we add to the subjectivity of that.

Senator KENNEDY. I am just interested in finding out how we are going to proceed.

Usually, after the committees get started on a particular occasion, there is discretion obviously of the Chair on a particular occasion. But I did not know it was going to apply for every single hearing that we are going to hold.

I have interests in inquiring of the witness as well in these matters. And it just seemed to me—and there are other Senators here—who would just like to know. Now it is 3 o'clock. This witness has been on for about 1 hour. And to the best of my knowledge, you have had about a half hour of questioning. And I just wanted to find out.

Senator DENTON. I think we started about twenty after. And since this hearing has been very much occupied with previous considerations of and use of Mr. Figures' information by those opposed to the nomination, I think in the interests of fairness there should be a proportionate time by which he is questioned. And it is about time that he be questioned, I think, considering the importance of what he said.

For him, I want him to know that I respect him as a lawyer. I respect him as a man. I think that you are—have been propounding things which, were I you, and perhaps even if I were in your position, I would be propounding also.

I might question whether in your zeal you might have gotten very heated at times and might have felt so strongly about this that there might be some lack of objectivity at times in conversations you might have held, and even in the memories that you might hold.

Senator **KENNEDY**. Mr. Chairman, I object to that kind—the witness is not on trial here. There has been absolutely nothing that has been suggested as to that kind of conduct. We are not here to browbeat these witnesses. We are here to hear their testimony.

Senator **DENTON**. Compared to your interrogation of Mr. Sessions, I think my questioning of Mr. Figures has been very polite.

Senator **KENNEDY**. You are trying to characterize the nominee's conduct at some time that is not a matter of public policy. You are talking about some conduct that we can absolutely see no vindication of. You're trying, evidently, to impinge the credibility of the information he is giving.

I think there is no basis for that, that I have seen.

Senator **DENTON**. I am trying to ascertain the objectivity of the statements that, when Mr. Sessions says something, he is not jesting, no matter what he says, and when the witness who accuses him of that says that he is making a statement in jest, we have to agree with it.

Senator **KENNEDY**. Well, what is the answer to the question about when others are going to be permitted to ask questions?

Senator **DENTON**. Well, after this line of questioning, it will be 10 minutes apiece, Senator Kennedy.

How can you be so certain that, as you say, quote, he was without question describing his personal and manifestly deeply felt position?

I ask that because I know men with whom I have gotten into a heated argument like that, and I have said things that I did not mean, and so have they.

Mr. **FIGURES**. Senator, the only thing that I have to base it on is the manner in which the statement was delivered; the obviously serious look on his face when he said it; the pitch of his voice; the rapidity with which words followed another. There just was no doubt in my mind, Senator, that he meant what he was saying, and he wanted me to get the message. And I got it.

Senator **DENTON**. Did you say anything in response to him?

Mr. **FIGURES**. My recollection is, I was somewhat speechless. I was speechless; not somewhat speechless. I could not think of anything to say.

Senator **DENTON**. So the conversation ended about there and you did not make any efforts to persuade him to the contrary?

Mr. **FIGURES**. No, sir. I think I said, thank you. And he turned around and walked out.

Senator **DENTON**. But there was, in other words, some anger felt by you, and resentment?

Mr. **FIGURES**. Oh, I was not—I was not angry. I was just somewhat shocked.

It was just unconscionable to me that someone would say that during this day and time. I did not know how to respond. I did not want to say anything else that would provoke him any further.

Senator DENTON. Your portion of the statement referring to the Klan pot smoking remark is at substantial variance with testimony received yesterday. Mr. Barry Kowalski told the committee that his recollection of the incident is that you were not present, and that it was he, Kowalski, who informed you of the humorous comment.

He, Mr. Kowalski, also said it was an obvious joke, and you have called it a serious statement with a serious face. I refer again to the cartoon which you participated in making some kind of jest, and your own admission, or your own assertion, that you referred to that subversive NAACP.

So it strikes me as bizarre and somewhat convenient for your purposes, and those who oppose Mr. Sessions, that on the one hand there is offense at Mr. Sessions' comments and no offense from yours.

You have said——

Senator HEFLIN. Mr. Chairman——

Senator DENTON. Yes, sir.

Senator HEFLIN [continuing]. I would like to state that my recollection of Mr. Kowalski's statement, and the reading of his deposition—in his deposition that he gave, he made the statement that it was to the best of his recollection that Mr. Figures was not present. Then on the testimony here in this committee he testified that he was not positive and that he did not know.

I think the characterization of your question, that Mr. Kowalski says that Mr. Figures was not present, is incorrect in relationship to Mr. Kowalski's testimony. The sum total, as I gather it from the latest expression of Mr. Kowalski was, that he was not certain; he did not know.

Senator DENTON. I accept that. We do not have a transcript, and it is my recollection that the general feeling expressed by all of them was that he was joking, and I thought it was accurately reported that way.

Senator KENNEDY. If you could yield just on this point? As I understand from the testimony, Mr. Sessions said that the statement was made, I know, in the presence of Barry Kowalski, who came down from the Department of Justice, Civil Rights Division, to prosecute the case, and my assistant Tom Figures was the lead person in our office. I, in that work, was reading the report and saw that the client had left the meeting and gone out and smoked pot, and I thought it was really kind of, I do not know, bizarre.

Senator DENTON. I do not think it says that Mr. Figures was there, Senator Kennedy.

Sir, I do not believe that that says that Mr. Figures was there, in Mr. Kowalski's view, unless I am hearing it wrong.

Mr. Figures, you have said that you annotated the Klan cartoon with a comment that was intended to show just how serious you thought Mr. Sessions' remark was.

Did you know that Mr. Kowalski thought that the comment was a joke, and that he has so testified?

Mr. FIGURES. I was here, yesterday. I heard Mr. Kowalski's testimony.

Senator DENTON. So you knew it then?

Mr. FIGURES. Sir.

Senator DENTON. You knew that he thought it was a joke; Mr. Kowalski?

Mr. FIGURES. Now, at the time that the statement was made——

Senator DENTON. No, I mean that Kowalski thought it was a joke. You knew that he thought it was a joke.

Mr. FIGURES. That is what he testified.

Senator DENTON. On the original comment.

Mr. FIGURES. Well, his testimony yesterday, I believe, was that he thought it was a joke. But at the time that the statement was made, frankly, it was unclear to me what Mr. Kowalski's true thoughts about it were.

Senator DENTON. How did you give the cartoon to Mr. Kowalski?

Mr. FIGURES. Senator, my best recollection is that just as a matter of coincidence, I suppose during the course of the Donald investigation, and shortly after Mr. Sessions made that statement—which, by the way, I heard because I was there; with all due respect to Mr. Kowalski's recollection—I received in the mail that cartoon. A friend of mine sent it to me who lived at the time up toward Anniston. I think it had appeared in an Anniston, AL, newspaper.

I thought it, at that time, very appropriate, an appropriate vehicle for me to use to express my criticism of Mr. Sessions' position regarding the Klan.

I wrote that notation on it; made two copies; I gave Mr. Sessions one and I gave Mr. Kowalski one.

Senator DENTON. All right. Looking at the cartoon again, do you not believe that Mr. Kowalski could take that cartoon as humorous?

Mr. FIGURES. I am sorry, I did not clearly understand the first part of the question, Senator?

Senator DENTON. I am asking that with what you wrote on there and the content of the cartoon, would you not believe that Mr. Kowalski would consider the thing humorous; not vicious?

Mr. FIGURES. Sir, I am not trying to be evasive. I am not inside Mr. Kowalski's head. I do not know what his thought processes are. I know that I did not consider it a joke. I did not consider it humorous. I did not at that time, and I still do not, Senator.

Senator DENTON. In just a minute, then, I am turning it over to Senator Kennedy.

Moreover, Mr. Figures, is it not true that another assistant U.S. attorney in the office, Mr. E.T. Rolison, while working a totally unrelated case, received information that Benny Jack Hayes, the highest ranking Klan official in the Mobile area, had committed arson in an insurance mail fraud scheme, and that Mr. Rolison authorized an undercover investigation which led to the indictment and conviction of Mr. Hayes and his wife?

Mr. FIGURES. I know that that case was assigned to Mr. Rolison. With respect to what Mr. Rolison did in investigating the case, I am not competent to testify to that because I just do not know.

Senator DENTON. So Mr. Rolison was the assistant to Mr. Sessions, and he prosecuted that case to the end. And is it not also true that the U.S. attorney's office recommended maximum sentencing for Mr. Hayes, who is now incarcerated in a Federal penitentiary?

Mr. FIGURES. I do not know what we recommended in that case, Senator. Other than the fact that it was assigned to Mr. Rolison, and I believe Mr. Rolison tried it, I do not think it went out on a plea; beyond that, I do not know.

Senator DENTON. Well, I just cannot believe that you thought that Mr. Sessions really had any liking for the Klan, in commonsense or in the context of your working with him and his assistants in that office.

Mr. FIGURES. Senator, that statement, if taken in isolation, might support your conclusion.

But there were other statements and actions, during the entire 4 years that I was there, which aided in forming my conclusion with respect to his position on the Klan.

Senator DENTON. Well, I respectfully submit, had I known a U.S. attorney for whom I was working had a liking for the Klan, I would not only retire, but I would blow the whistle on him right away.

Senator Kennedy.

Senator KENNEDY. Mr. Kimbrough was referred to earlier. Was he the U.S. attorney, was it?

Mr. FIGURES. Yes, sir.

Senator KENNEDY. And I expect that after the change of the administrations, he was replaced; am I correct?

Mr. FIGURES. Yes, sir.

Senator KENNEDY. And that is generally the procedure. So around the country, very few are retained, some for brief periods, who are involved in major cases; but by and large the practice has been to replace them.

You in your testimony describe also comments regarding the Ku Klux Klan remark which Mr. Sessions made during the Donald case.

Now, in response to Senator Denton's question, you indicated that there were other actions or statements that were made during the period that you were in the U.S. Attorney's office that led you to draw this conclusion.

Were those statements the statements that were made with regards to the Ku Klux Klan, and also about, he must think he's in New York and this is Alabama, and the other testimony, which I guess was in your statement but you have not commented upon, and that is about, be careful what you say to white folks?

Mr. FIGURES. Yes, sir; those type of statements.

Senator KENNEDY. Were there other statements as well?

Mr. FIGURES. Yes, sir, Senator; there were others. You know, I was regularly called boy. And if you grow up in the South, perhaps in the border States, you know what that means.

Senator KENNEDY. When were you called boy? When you were involved in being assistant U.S. attorney?

Mr. FIGURES. Yes, sir.

Senator KENNEDY. And who called you boy?

Mr. FIGURES. Mr. Sessions did; one or two of the other assistants.

Senator Kennedy. And what did you say when they called you—used that term? Did you ever say anything to them? Did you ever say, knock it off, or quit it?

Mr. Figures. Senator, I felt that if I had said anything or reacted in a manner in which I though appropriate, I thought I would be fired.

I always felt that my position was very tentative around Mr. Sessions.

I had developed these two case goals. And I said I was going to finish that. Private practice was always in the back of my mind. And I said when those got into a position where I could leave, I would leave.

There were also financial considerations. I was not sure that I could make the financial transition.

Senator Kennedy. To your knowledge, did he ever refer to any other assistant U.S. attorney or any other person as boy in your presence?

Mr. Figures. Not in my presence.

Senator Kennedy. What did you think Mr. Sessions meant by the remark, referring to you, he must think he's in New York, and this is Alabama?

Mr. Figures. My best recollection is that I had declined to accept his recommendation that a particular civil rights case not be further investigated. And my interpretation was that he obviously thought that there were different standards of justice. Some applied in New York and elsewhere; others applied in Alabama; that I had better take the Alabama interpretation.

Senator Kennedy. Were there any other assistant U.S. attorneys who were black who were in the—at the time you were there?

Mr. Figures. No, sir.

Senator Kennedy. You were the only black assistant U.S. attorney?

Mr. Figures. Yes, sir.

Senator Kennedy. In your testimony you have some comments about, be careful what you say to white folks.

Were you surprised that Mr. Sessions would make such a statement?

Mr. Figures. At the time that he made it, no.

Senator Kennedy. Why not?

Mr. Figures. Because other statements had preceded that, which suggested that he was capable of saying such.

Senator Kennedy. Did you hear that—I believe, to the best of my knowledge—when he was asked about the use of the words, that phrase, he said, I believe, that he just used the word "folks," not "white folks."

Mr. Figures. That is not true, Senator. He said, white folks.

Senator Kennedy. And you remember that occasion?

Mr. Figures. Yes, sir.

Senator Kennedy. While you were an assistant U.S. attorney working for Mr. Sessions, did you ever receive a performance evaluation from Mr. Sessions?

Mr. Figures. Yes, sir, I received annual performance evaluations.

Senator Kennedy. Do you know what the rating was?

Mr. **Figures**. The last two ratings were excellent, but that standing alone bespeaks some other things.

The 1984 rating, as I recall, Mr. Sessions wanted to rate me in a manner that I did not think was fair; and I resisted. And he changed it such that the overall rating was excellent.

The last rating that I received, he wanted to rate me the same way, in that particular category.

Senator **Kennedy**. What category is that again?

Mr. **Figures**. He had some kind of problem with relationship with clients and others. My conclusion is that if you ever become considered for a U.S. attorney or something like that, you know, people would look at that category, relationship of clients and others. For some reason he wanted to rate me in that category in a manner that I thought unfair.

The last time that he chose to do it, I just resisted, and I told him that I would appeal. There is an appeal procedure to the executive office for U.S. attorneys with regard to ratings. You have 10 days within which to appeal. On the 10th day, he called me at home, and he said that he would change it because I might tell the U.S. attorneys—executive office of the U.S. attorney's office something else. Or you might have some other things you want to tell them too. And I do not want to fight about it. So he changed it.

Senator **Kennedy**. What did you understand those other things to be, that you think he was most concerned about?

Mr. **Figures**. The type of things that I have described in my statement. And—well, basically, those types of things.

Senator **Kennedy**. I have no further questions.

Senator **Denton**. Senator Heflin.

Senator **Heflin**. Just for a point a clarification, since the record is a little confused on Mr. Kowalski as to whether Mr. Figures was present during the statement, my staff has pointed out to me on page 81, and then on page 56 of the record, that Mr. Sessions says that Mr. Figures was present, along with Mr. Kowalski at that time. So just to clarify that.

Mr. Figures, this statement about New York and Alabama, and in your statement——

Senator **Denton**. Excuse me, Senator, can you give us the page numbers? Are you referring to the first day's testimony by Mr. Sessions, or are you referring to Mr. Kowalski's own testimony?

Senator **Heflin**. Page 81, which includes Mr. Sessions, and 56, which I assume is the same thing.

Senator **Denton**. Is that the first day's testimony, sir?

Senator **Heflin**. Is that what it is? I am so informed.

Senator **Denton**. There was other testimony yesterday——

Senator **Heflin**. It is hearsay to me, but that is what staff said.

Mr. Figures, on your statement on page 3 in which you read, I believe verbatim, that is the result of a disagreement between Mr. Sessions and myself regarding the handling of a particular case. Mr. Sessions said, referring to me, he must think he is in New York. This is Alabama.

That language would indicate to me that that was not said to you directly; it was said to someone else.

To whom was it said?

Mr. **Figures**. Linda Nelson.

Senator **Heflin**. Linda Nelson? Who is Linda Nelson?

Mr. **Figures**. Secretary to the U.S. attorney.

Senator **Heflin**. Secretary. Were you—did you hear it?

Mr. **Figures**. Yes, sir.

Senator **Heflin**. You heard it?

Were there any specific circumstances? I mean, did Mr. Sessions know that you were present? Or later you referred to something in regards to what you had overheard. Would you give us a little more of the details of the factual situation in regards to that statement?

Mr. **Figures**. Judge Heflin, I had been in Mr. Sessions office, discussing, as best as I can recall, a criminal civil rights matter. I cannot remember the name, or anything like that. And he had suggested that he thought the case ought to be declined on before it went up to Washington.

I recall disagreeing with that. And told him that if he felt that way, I preferred not to handle it.

The conversation ended on somewhat of a, I think it is fair to say, heated level. And he opened his door for me to walk out.

Linda Nelson's office adjoins his office. And by the time I got to the door of Linda Nelson's office, he was walking behind me. And he was standing in Linda Nelson's office. And he said, he must think this is New York; this is Alabama.

Senator **Heflin**. Now, I believe Mr. Sessions testified that he thought that remark was in connection with the *Sammy Murray* case. But you say that it was not; it was another case.

Mr. **Figures**. It was not—I do not recall it being made in connection with the *Sammy Murray* case, Judge.

Senator **Heflin**. All right. So now——

Senator **Denton**. Excuse me, Senator Heflin. If you will defer on a question which has been raised so many times.

I have read page 56 and page 81 to which you referred, and I do not find, as yet, any verification that anyone said that Figures was in the room. But I just wanted to get it straight in my own mind.

Senator **Heflin** [continuing]. Indicate that you mentioned to Barry Kowalski, Civil Rights Division attorney from Washington, who spearheaded the prosecution of the klansmen hanging of a black man, the report of the klansman smoking marijuana which you think you read in the presence of, I understand, at the moment you made the statement, that was referenced before Mr. Kowalski and your assistant, Mr. Figures, was also in the room.

Senator **Denton**. Period.

Senator **Heflin**. Period.

Mr. Figures is a black man, is he not?

Senator **Denton**. Question mark.

Senator **Heflin**. Yes.

Senator **Denton**. Answer, yes, he is a black man.

Senator **Heflin**. Well, I——

Senator **Denton**. He did not answer any question about Figures being in the room.

Senator **Heflin**. I do not see any qualification following the yes?

Senator **Denton**. All I ask is that you read it. I understand that at that moment when you made the statement that was referenced before, Mr. Kowalski and your assistant, Mr. Figures, was also in the room, period. Mr. Figures is a black man, is he not? Mr. Sessions: Yes. He is answering the question of whether or not Mr. Figures is a black man.

Senator **Heflin**. Well, that depends on whether a man would be motivated to—well anyway, I think that should be cleared up. Sort of a scholarly, detailed approach on it. But it is, as I pointed out, here—I believe on page 56 also that it is also stated that——

Senator **Denton**. There's another period there, Senator Heflin.

Senator **Heflin**. Well, further on the page——

Senator **Denton**. It goes on there and says, and my assistant—excuse me; I did not mean to interrupt you, sir. Go ahead.

Senator **Heflin**. Well, further on that page Senator Biden comes along.

Senator **Denton**. Ah, but that is Senator Biden coming along.

Senator **Heflin**. And right below that, Senator Biden, "yes, and the statement that you allege to have made was, those bastards, I used to think that they were OK, but they are pot smokers. Now I could see how someone could say that humorously. That does not mean you are defending the Klan, but you do not think it was insensitive to say that in front of a black man after a black man had just been brutally beaten and hung. Do you not think that that was insensitive with a black man sitting there to say that?"

Senator **Denton**. What page are you on now, Senator?

Senator **Heflin**. Eighty-one, just following through on what you were quoting.

Mr. Sessions replied: "Senator, my impression of the situation was it was so ludicrous that anyone could think that it was supporting the Klan that he would not be offended by it."

Now I believe any reasonable interpretation would say to this whole line of questioning, if there is any question in Mr. Sessions' mind as to whether Mr. Figures was present, he would have brought forth the fact that Mr. Figures was not present.

Senator **Denton**. All right, would you cite the paragraph or page you are talking about there? I do not——

Senator **Heflin**. It is 81, the same page that you were reading from just a few minutes ago.

Senator **Denton**. Yes, sir; and what part of the page, please?

Senator **Heflin**. Well, the "yes" is in the middle of the page. I started reading right below the "yes."

Senator **Denton**. The "yes" is in the answer to the question, Mr. Figures is a black, is he not, question mark. Mr. Sessions: Yes. Now what else do you have?

Senator **Heflin**. I will read it again, following the "yes."

Senator **Denton**. Well, why—you keep referring to that "yes." I do not understand it.

And then Mr. Biden says "yes" as if it means that the guy was there, and he asserts that he was in there. But I do not see Mr. Sessions saying he was there.

Senator **Heflin**. Well, I do not want to belabor it. But if you will read all of the content of page 81, and tell me their questions are not directed to the fact that Mr. Figures was there. And the question of the insensitivity of saying the statement before a black man, and then show me anywhere, with all of that arisen, and on that one page, at least four instances—I believe four—of where there are statements that Mr. Figures was present or that he was a black man, and he was there, and the question of insensitivity to black men, and show me any statement that denied that he was there or that says, "I don't remember," or anything else, I think it is rather clear what that states.

Senator **DENTON**. Well, I do not agree with you. But I do not see that there is any positive statement saying he was not there.

Senator **KENNEDY**. Would the Senator yield for a question?

Senator **HEFLIN**. Yes.

Senator **KENNEDY**. Kowalski is white; is that right?

Senator **DENTON**. Yes, sir.

Senator **KENNEDY**. So the references to somebody black in the room would be a black man?

Senator **DENTON**. That is Mr. Biden, Senator Biden's reference.

Senator **HEFLIN**. I do not know. I am trying to be fair about this thing. I want to give Mr. Sessions a fair hearing. Though he is not my nominee, he is from my State. I want to be fair to him. I want to be fair to everybody else.

But I think when we phrase questions, we ought to be fair as to how we phrase it. And that is the only thing I want to say about it.

Senator **DENTON**. Senator East.

Senator **EAST**. I have no questions, Mr. Chairman.

Senator **DENTON**. Mr. Figures, before you left the U.S. attorney's office, in 1985, had you threatened to resign before?

Mr. **FIGURES**. Yes, sir.

Senator **DENTON**. Do you recall a conversation with Mr. Sessions several years ago in which you were going to quit, and Mr. Sessions asked you to stay on to think about it over the weekend? And do you recall him telling you that he thought you had a significant contribution to make?

Mr. **FIGURES**. Senator, my recollection of that conversation is that he did not ask me to stay on. He did ask me to think about it over the weekend. But he did not ask me to stay on.

My best recollection is that he did not ask me to stay on.

Senator **DENTON**. Senator Heflin.

Senator **HEFLIN**. The procedure relative to the position of the assistant U.S. attorney and the U.S. attorney and the Department of Justice, what is the normal procedure pertaining to this if a—say that you are assigned a case, and you have certain feelings about it. You make those known to the U.S. attorney.

What relationship does the assistant have to the U.S. attorney? What relationship then does the U.S. attorney have to the Department of Justice? Who vetoes who, or is it necessary that all be in agreement if the assistant or attorney general takes a position contrary to the U.S. attorney?

If you would go into that procedure, including the procedure where the U.S. attorney might take a different position from the Department of Justice? All of this, as to how this works, and who has the final say-so?

Mr. **FIGURES**. Judge Heflin, it depends on the nature of the case.

In civil rights cases, voting cases, criminal civil rights case, pursuant to the U.S. attorney's manual, and I suspect other authoritative sources, the U.S. Department of Justice has ultimate decision-making authority with respect to whether a case is brought.

There are some other cases, type cases, where the U.S. Department of Justice has ultimate authority.

The U.S. attorney's manual pretty much sets out what the U.S. attorney can decide on his own without consultation or approval from the U.S. Department of Justice, and what he can not. It really just depends on the case, the type of case that it is.

Senator HEFLIN. Now, where the U.S. attorney and the assistant U.S. attorney differ, does the assistant U.S. attorney's opinion go to Washington as well as the U.S. attorney's?

Mr. FIGURES. In the criminal civil rights area, the opinion of the assistant U.S. attorney who reviews the matter is generally noted on the report that is sent to Washington; yes, sir.

Senator HEFLIN. Now, what happens when something that is assigned to one assistant and then the U.S. attorney may take it away from him and put it and give it to another?

Mr. FIGURES. If it is a criminal civil rights matter, ordinarily the opinion of the first assistant would not be included on the report. It would be the opinion of the second assistant who gives the official opinion.

Senator HEFLIN. There would be no requirement that it be there, the first one? Or would there be a requirement that they both be there?

Mr. FIGURES. I have not ever seen a report where there are opinions from two assistant U.S. attorneys, Judge.

Senator HEFLIN. There has been some—in your statement or previously it has been asked about declining criminal cases of a civil rights nature. And some statement to the effect that you are quoted as having said, maybe in your statement, you quote Mr. Sessions as saying, I wish I could decline all of them.

I do not believe you went into that in your oral statement.

Mr. FIGURES. Judge Heflin, that statement was made in connection with a discussion of the *Hodges* case. The *Hodges* case was a criminal civil rights matter, in Evergreen, or Greensboro, or something, I believe, that had a green in the name of the city or town, where an individual or a couple had moved into an all-white neighborhood, if I recall. And the home had been shot into.

Mr. Sessions assigned that matter to an assistant–another assistant U.S.—an assistant U.S. attorney other than myself. Apparently, that assistant—well, I know that that assistant U.S. attorney declined prosecution on the case.

The case went up to the Department. The Department sent back down an investigative request containing several items that the Department felt should be explored before a final decision was rendered with respect to the case.

Thereupon, Mr. Sessions called me into his office and told me that he had given the case to this assistant; additionally stated that it was clear to him who had performed the act. But that the Department wanted some additional investigation, and he wanted me to take it over.

I indicated to Mr. Sessions that I preferred not to because I had not reviewed it initially. I had not worked with the FBI agent who was investigating the case; that I would be going over the tracks of someone else; that I just felt it inappropriate for me to take it up after it had been worked between an assistant and an FBI agent, and the assistant that had—you know, I had not benefited from telephone conversations with the FBI agent. I know that in working criminal civil rights matters that oftentimes impressions are not included in the report; oftentimes certain witnesses are not interviewed, or if they are interviewed, oftentimes from a strategic trial strategy—well, a trial strategy point of view, you leave certain things out of the report. There is a relationship that engenders, when you work one of these kinds of cases, between you and the FBI agent. And I had not benefited from all of that.

So I told Mr. Sessions that I preferred not to take it up. He became upset. And my recollection is that he took the *Hodges* case file and he threw it on the desk, and he said: Damn it, I wish I could decline on all of them.

Senator **Heflin**. Decline on what?

Mr. **Figures**. Decline on all of them, referring to criminal civil rights cases.

Senator **Denton**. Would you mind if I asked if he thinks that that was because he was so racist or because Mr. Kimbrough advised him not to take on the other case; it would just get him into trouble?

Mr. **Figures**. Sir, taking the statement in the manner in which it was delivered, the impression on his face, the manner in which his face blushed, I believe that it represented a hostility to investigating and pursuing those types of matters.

Senator **Denton**. I must say that all the Department of Justice witnesses who have testified have said that he was aggressive, and even Mr. Hebert said that he was more cooperative than his predecessor, and took on tremendous workloads by the testimony of a black attorney who knew him very well.

And I just wanted to make that observation, Senator Heflin.

Senator **Heflin**. I have no further questions.

Senator **Denton**. Senator East.

Senator **East**. I have no questions, Mr. Chairman.

Senator **Denton**. Mr. Figures, you have made reference to being called boy. Would you tell us who else was present when Mr. Sessions called you boy?

Mr. **Figures**. The first time he did it, he was standing in the doorway of the office to either Ginny Granade—I believe it was Ginny Granade's doorway, in Ginny's office, where Ginny—and I believe that E.T. may have been in there, I am not sure. But my recollection is that E.T. and Ginny were in there.

Senator **Denton**. So the first time Ginny Granade and others might have overheard him—E.T. Rolison—you mentioned, did you not, that there were many times that he called?

Other people called you boy. Who were they?

Mr. **Figures**. Well, the first time it was done, Senator, it was Ruddy Favre.

Senator **Denton**. Is he dead?

Mr. **Figures**. Yes, sir.

And then subsequently, Ed Vulevich.

Senator **Denton**. It seems remarkable to me that since you had responded earlier on to the National Bar Association with adverse testimony regarding Mr. Sessions conduct, remarkable that you would not have mentioned someone calling you boy.

I find it, you know, a caricature of reality in Mobile, AL, for one attorney, white, to call a black attorney boy. I find that incredible that it makes me wonder that others can find it credible, that you would not have objected, unless he was teasing in some way that would have been appreciated by you.

But you had this persecution of being called boy in the office by Mr. Sessions on a regular basis?

Mr. FIGURES. Senator, as I have have—no, I did not testify, I believe, that he called boy on a regular basis. Senator Kennedy asked me if there were other comments that were made.

Senator DENTON. I am just trying to get it in context in fairness.

Mr. FIGURES. Yes. I felt very tentative around Mr. Sessions. I had to guard my reaction to things, Senator, because I needed a job at the time. And I wanted to finish the matters that I have alluded to. So I took a lot of things; I just kept it inside.

Senator DENTON. But why, if you gave adverse testimony regarding comportment you considered unfavorable to him, would you not have mentioned that before now, because——

Mr. FIGURES. I have. I have, Senator. I told Roland Nachman that.

Senator DENTON. Not the National Bar Association or——

Mr. FIGURES. My recollection is, I told the National Bar Association also. But you know I have no control over what they put or do not put in their report.

Senator DENTON. OK.

You have a brother who is an elected official; is that correct?

Mr. FIGURES. That is correct.

Senator DENTON. And do you also practice law with him?

Mr. FIGURES. That is correct.

Senator DENTON. Would you tell us what party Senator Michael Figures is?

Mr. FIGURES. He is a Democrat.

Senator DENTON. Do you consider yourself a Democrat?

Mr. FIGURES. I have voted for Republicans in my life, Senator.

Senator DENTON. Sir?

Mr. FIGURES. There are Republicans that I have voted for, but I consider myself a Democrat.

Senator DENTON. Do you now, or have you ever, held an official position in the Democratic Party?

Mr. FIGURES. The State Democratic party? The county Democratic——

Senator DENTON. Any official position in the Democratic Party at any level?

Mr. FIGURES. I was vice chairman of the Mobile County Democratic Conference, upon returning to Mobile.

Senator DENTON. Are you aware of the many articles in which it has been alleged that Mr. Sessions appointment of President Reagan was involved in a conspiracy in which I was involved to render black voters intimidated so they would not vote in my election in 1986? If not, I can provide you numerous copies of such newspaper articles?

Mr. FIGURES. I have read those articles, Senator, or articles of that type; yes, sir.

Senator Denton. Are you aware that Democratic and Republican polls over the past months have shown that this Republican Senator has 40 percent support from the black voters in Alabama?

Mr. Figures. I am not aware of that, Senator.

Senator Denton. Well, for the record, that is the result of the polls.

I am sure that that is the effort here, to change them, as you said, Reverend. And that is the effort behind this smear campaign on Mr. Sessions; I think the newspaper articles would indicate that.

That is why I am asking about the party affiliation, because as the predecessor to Mr. Sessions' Mr. Kimbrough, allowed, politics is pretty tough down there and we have had some red-hot issues in Alabama politically and racially, of course. We have had the school prayer case with the—very uncharacteristic of blacks, the Muslim gentleman said that there was a violation of separation of church and state; he brought the charge. There's been an affirmative action dispute, which you have referred to yourself. The school board was full of such controversy. And then the change in form of city government in Mobile was going on all at this time. As Mr. Kimbrough said, it is very difficult for anyone to believe that politics can be separated from anything else.

Are you aware that your brother, Senator Michael Figures, has referred to himself as a rascist?

Mr. Figures. I am not aware of that, Senator.

Senator Denton. Senator Heflin.

Senator Heflin. I have no questions.

Senator Denton. Senator East.

You may stay if you wish, Mr. Figures. You are excused, but would you stay around? Because we might be recalling you.

OK., the Honorable Hank Sanders, Alabama State senator, Montgomery, AL.

Mr. Sanders. Senator Denton, Judge Heflin, Senator East, my name is Hank Sanders, and I want to thank the committee for the opportunity of appearing before it to testify on this very critical issue.

I have practiced law in Selma, AL, and am a member of the law firm of Chestnut, Sanders, Sanders, Turner, & Williams.

I am also a member of the State senate. And I have been a member of the State senate for a little over 2 years and 4 months.

I represent a senator district composed of eight counties, either all or part of eight countries, that stretch across what is known as the west Alabama Black Belt. Among those counties are Perry and Greene, Lowndes and Sumter.

Before I get into the substance of my testimony, I would like to offer two—copies of two letters that were sent out. One of them is titled a petition, and it is from some elected and appointed officials in Green County who are opposed to the nomination of Mr. Sessions.

And I would to have those offered.

Senator Denton. You want these included in the record?

Mr. Sanders. Yes, sir.

Senator Denton. Without objection.

Mr. Sanders. And the second one is a latter that is signed by 17 of the Alabama legislators who are black, and who are also opposed to the nomination of Mr. Sessions. And I would like to offer it to be a part of the record, also.

Senator **Denton**. Without objection, it is so ordered.

[The following was received for the record:]

Statement of Henry Sanders

State Senator for the 23rd District of Alabama

Mr. Chairman and members of the Committee, my name is Hank Sanders. I am the State Senator for Alabama's 23rd District, which includes much of the area known as the Black Belt. I want to thank you for the opportunity to appear before you today to voice my strong opposition to the nomination of Jefferson Sessions, III for a federal district judgeship for the Southern District of Alabama.

For the past five years, Mr. Sessions has served as U.S Attorney for the district in which many of my constituents reside. Based on his conduct in that office, I believe Mr. Sessions lacks the competence, judgment, and fairness required of a federal judge. His failure to enforce federal civil rights laws and his politically-motivated prosecution of local Black civil rights leaders for voting fraud are just some of the examples which indicate he does not possess the necessary qualifications to be appointed to the federal bench.

I believe I have a unique perspective on the impact Mr. Sessions' appointment would have on the Southern District of Alabama. I have lived in that area for 14 years and have been involved in election contests there since 1972. I represent all the counties involved in the recent absentee ballot investigations. Participating as both an elected official and a defense attorney in these investigations, I visited with many persons directly and indirectly affected by the absentee voting investigations and prosecutions.

To fully understand the impact of the voting fraud investigations in my area, it is important to look at the political landscape. The Black Belt is composed of 12 counties ranging from 42% to 78.2% Black. Eight of the counties have a Black majority. Although the Voting Rights Act was enacted in 1965, the electoral progress for blacks has been slow and difficult. Black officials still do not come close to representing these areas proportionately. Of the 193 elected officials in the Black Belt, only 76 of them are black. Even this number is misleading since few of the elected black officials hold higher offices. For example, only one of the twelve probate judges is black and only three of the twelve district judges are black. There are no Black county-wide elected officials in any county that does not have a Black majority.

The electoral battles have been intense and bitter. While Blacks outnumber Whites, Whites retain economic and political control over the region. Absentee voting has played a crucial role in elections for both Whites and Blacks. The average margin of victory in a seriously contested election between a White candidate and a Black candidate is less than 200 votes.

Historically, Blacks were harmed by the absentee process since Blacks would win at the polls only to be defeated when the absentee ballots came in. In fact, today, Whites still vote absentee more frequently than Blacks. When Blacks realized the power of the absentee vote, they learned the laws of the absentee process under the leadership of such persons as Albert Turner, and began to use the process to their benefit. The absentee process is particularly critical for Blacks since the counties are poor, many elderly persons are unable to go to the polls for health reasons and a high percentage of blacks work out of the county.

This newly discovered political power of Blacks has not come without injury. In 1982, Blacks relied heavily on the absentee process and secured control of the County Commissions and Boards of Education in five counties. The victory was bittersweet, however. Local criminal investigations into the winners' use of the absentee process were soon initiated but not a single indictments arose from the investigations. The political motivation for the investigation is especially apparent from the fact that in each county, the targets of the investigations have been long-time Black civil rights leaders, persons who have successfully used the absentee process to strenghthen Black political representation and power.

In 1984, in Perry County which is one of the five counties with a strong Black political presence, Jefferson Sessions as U.S. Attorney prosecuted three black civil rights leaders who have been active in promoting voter participation. Most of the charges involved alleged violations of the absentee ballot process based on efforts to assist illiterate, elderly voters.

The prosecution of these activists was disturbing for several reasons. First, Mr. Sessions engaged in selective prosecution. He failed to investigate allegations of white voter fraud in the same election despite the fact that the defendants and the witnesses before the grand jury expressly called to his attention serious incidents of election fraud in Perry County. Indeed, the number of absentee ballots of White voters dropped 50% in the last Perry County election indicating that Whites were advised of the pending investigation.

Second, the prosecution's treatment of its witnesses in the case, many of whom were frail, elderly voters, warrants grave consideration. The witnesses were interviewed by FBI agents in a way calculated to intimidate them, and to pressure them into saying what the government wanted to hear. Mr. Sessions acknowledges direct involvement in supervising the FBI agents who were sent out to ask voters who they voted for.

The manner in which the witnesses were called before the grand jury also served to intimidate the witnesses, and indeed, deterred them and other elderly blacks from voting again. Although the trial was ultimately held in Selma, which is close to Perry County, the government convened the grand jury in Mobile, several hours away. The witnesses were taken by bus to Mobile. While boarding the bus in Selma, the witnesses were surrounded by police with guns, and the bus was escorted to Mobile with an armed police escort. The bus trip proved harmful for many of the elderly, infirm witnesses. One witness suffered a stroke upon return from the grand jury and another suffered a heart attack.

Other aspects of the Perry County trial indicate that the prosecution was ill-advised and evidenced a lack of competence on the part of the prosecutors. Although the prosecution obtained over 25 counts for each defendant in the indictments, the prosecution never actually presented any evidence to support a number of these counts. The trial judge summarily dismissed a number of these counts at the close of the prosecution's case. Similarly, I believe that the indictment and theories of prosecution were so broad as to include virtually anyone who participated in the absentee voting process.

Mr. Sessions' use of the power of his office for such political purposes is deeply troubling to me. His unwarranted actions have effectively deterred the participation of Blacks in the electoral process in this District. His tactics in no way represent a willingness to preserve the rights of individuals, which is the role of a federal judge. Instead, his conduct is reminiscent of actions taken by Whites during the Post Reconstruction period. During that time, the right to vote of Blacks which had been recently established was effectively denied to countless Black voters through accusations of fraud by Black voters, replacement of Black elected officials with White officials by appointment, and a hostile or indifferent attitude by the government.

Mr. Sessions' appointment to the federal bench would have a devastating effect on the people of my Senatorial District. I urge you to deny his confirmation.

March 16, 1986

Senator Strom Thurmond, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C.

PETITION

As elected and appointed officials in Greene County, Alabama, we oppose the nomination of U.S. Attorney Jefferson B. Sessions to become a Federal District Judge because of the following:

1. His unjust prosecution of the "Perry County Three" for voter fraud.
2. His racist attitude and comments directed toward black people and organizations.
3. His general lack of judgement, maturity and wisdom necessary to be a Federal Judge.

NAME	POSITION	ADDRESS
Carol Prejean Zippert	Member Greene Co. Board of Ed.	P.O. Box 82, Eutaw, Al.
Spiver W. Gordon	Member Greene County Improvement Association,	Eutaw, Al
[illegible] C. Means	Trans. Supt.	Greene Co. Eutaw
Frederick D. Daniels	Credit Union Board Member	
John Zippert	Chairperson	Greene Co. Hospital and Nursing Home Bd. Eutaw Al.
Clarence E. [illegible]	Board of Ed Chairman	Box 565 Eutaw, AL
Booker T. Cooke Jr.	Greene Co. Democratic Committee	P.O. Box 751 Eutaw, Al. 35462
Mavis Hardy	Greene Co water & sewer	P.O. Box 771 Eutaw
Will Little	Chairman Greene Co. Improving Association	Rt. 2. Box 92 Eutaw, Ala. 35462
Biffie Simpson	Greene Co. Hosp.	Rt 1, Box 8-B Forkland, al 36740
Richard L. Osborne	Greene County District Judge,	P.O. Box 310, Eutaw, AL 35462
James Fleming Jr.		P.O. Box 557 Eutaw ala.
Garria Spencer	County Commissioner	P.O. Box 814 Eutaw Ala,
James Colvin	Mayor-Union	P.O. Box 782 Eutaw Al
Lester Brown	City Councilman	P.O 814 Eutaw Al 35462
Jerry Brown	Hospital Bd of Dir [illegible] & Secretary Bd of Dir.	Eutaw, Al
William M. Branch	Probate Judge	Greene Co. ala

March 17, 1986

Senator Strom Thurmond, Chairman
SENATE JUDICIARY COMMITTEE
224 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Thurmond:

We, the undersigned members of the Alabama Legislature, strongly protest the appointment of Jefferson Beauregard Sessions, III to the position of United States District Judge for the Southern District of Alabama. As you know, the appointment of a federal judge is for life and therefore requires integrity, competence and fairness. Mr. Sessions does not meet those requirements.

A person should not be considered for a federal judge who would make anything close to just one of the following statements:

> "I used to think the Klan was alright until I found out they smoked pot".
>
> "Jim Blackshear, a white attorney, is a traitor to his race for bringing civil rights cases on behalf of black persons".
>
> "The NAACP, National Council of Churches and the A.C.L.U. are Communist, pinko, unamerican organizations".
>
> "The Voting Rights Act is an intrusive piece of legislation and black and white people could work out any problems without having civil rights forced down their throats".

We understand that Mr. Session said not one but all the above statements. The Senate Judiciary Committee must not place a pox on Alabama and America by reporting such a nominee to the U. S. Senate.

Your cooperation is appreciated.

Respectfully submitted,

NAME	**NAME**
State Rep. Lucius Black Dist. 67	Charles P. Langford
A.	
	James E. Buskey
Hank Sanders, Sr.	Alvin Holmes
Earl F. Hilliard	Chris McNair
	Lewis G. Spratt
Rep. Pat Davis	Rep. William Clark
John Rogers	Yvonne Kennedy
John L. Thomas	

Mr. **Sanders**. One other preliminary matter that I would like to speak to before I go further——

Senator **Denton**. Excuse me, would you identify that last one? Did you say that it is from 17 Alabama legislators who are all black?

Mr. **Sanders**. Yes.

Senator **Denton**. You mean in the State government?

Mr. **Sanders**. State legislators.

Senator **Denton**. OK.

Mr. **Sanders**. Yesterday, Judge McRae said that one of my statements, I believe he characterized it as an outright lie. And I was concerned about that, and I wanted to set the record straight on that. And I believe the question was in response from a committee member concerning things that were not true that were in my statement.

And Judge McRae indicated that my statement indicated that there was no county that had a black minority that had a black elected official. And I want to specifically put that portion of my statement in the record.

And I said—just to read it briefly, it is on page 3—to fully understand the impact of the voting fraud investigations in my area, it is important to look at the political landscape. The Black Belt is composed of 12 counties ranging from 42 to 78.2 percent. Eight of the counties have a black majority.

Although the Voting Rights Act was enacted in 1965, electoral processes for blacks have been slow and difficult. Black officials still do not come close to representing these areas proportionately. Of the 193 officials in the black belt, only 76 of them are black. Even this number if misleading, since few of the elected black officials hold higher office.

For example, only 1 of the 12 probate judges is black, and only 3 of the 12 district judges are black. There are no black countywide elected officials in any county that does not have a black majority.

And I wanted to put that in there because I was specifically, in that statement, referring to those 12 counties in the black belt, and I stand by that statement as being a correct statement of what the situation is there.

Now, there is—the question of the significance of the large number of absentee ballots in Perry County——

Senator **Denton**. Excuse me, sir. On the point that you raised so emphatically about no elected black official where there is not a black majority, that question came up yesterday; I presume you know that, or you would not have been so emphatic in saying that you persist in that statement.

I refer to Judge King and Kennedy in Mobile?

Mr. **Sanders**. Senator Heflin—I mean, Senator Denton, what I did, in that statement, I said that we had to talk about the political landscape in our area. And I specifically referred to 12 counties. I specifically talked about all of the elected officials in that area.

Senator **Denton**. Well, you are only referring to those 12 counties; attacking that situation?

Mr. **Sanders**. Yes. And I think the statement clearly indicates that that was the only——

Senator **Denton**. I did not mean to imply that it was. I simply did not catch that.

Mr. **Sanders**. OK. I am sorry, Senator Denton, yesterday when he said that that was an outright lie. I thought that that was a rather strong statement under the circumstance.

Senator **Denton**. It was not noticed that you said only 12 counties. You know, they are making up representative government in many parts of Alabama in which that situation is being corrected.

Very briefly, the issue of the number of absentee ballots as triggering the investigation has been raised on a number of occasions. And I think it is important that we understand a little bit about Perry County, because that is critical.

Perry County is a county that is roughly 60 percent black, and roughly, 40 percent white. It is a county where the elections are just traditionally very, very close; and elections are intensely fought. In fact, I think that if you will check the records, you will find that Perry County has the highest voter turnout in the State of Alabama. And that is due to the intenseness with which the elections are pursued.

And as a part of that——

Senator **Denton**. That represents the hottest absentee ballot turnout in the State.

Mr. **Sanders**. Yes. I believe it may be the highest. Green may have a little bit higher, I am not sure.

But in any event, very briefly, because of that over the years absentee ballots have been a critical part of that election. In fact, over the years, basically, initially whites were the only ones who used the absentee ballot to any extent. But then blacks began to also use absentee ballots. And this came about specifically because that question was raised some years ago with the Justice Department. And the Justice Department said that there is nothing–we cannot say that that is illegal. And if you intend to win any elections, then you need to learn that process also.

So it was the U.S. Justice Department, a member of that, who suggested that particular process.

And black then began to use the absentee process also. And the fact that there were a large number is no indication that anything was wrong by virtue of that. There are many sick people. There are many elderly people. And there is some information to indicate that nearly a third of those people who work in the county work out of the county. I mean, people who work and live in the county, work out of the county, because it is a very poor county.

And I suppose in most other counties, if one made an attempt to get absentee ballots, then you would also have a large number.

And I wanted to touch upon that very briefly, because that is an explanation for the large number of absentee ballots.

Senator **Denton**. Again, sir, you may correct me, I am just trying to get this cleared up.

Testimony yesterday said there were a lot of young men standing around who had submitted absentee ballots, and all the Justice Department officials and every politically experienced person I have talked with thinks that roughly one-sixth of absentee ballots, as compared to one in a thousand in Jefferson County, is abnormal, and not to be normalized in the manner in which you are now doing here.

I may be wrong. If you want to explain that?

Mr. **Sanders**. Well, I would be glad to respond to that. Because it is abnormal—and that is abnormal; we are not talking about whether it is normal or not—whether that is an indication that something illegal is taking place. And that is no indication that something illegal is taking place.

In fact, with the U.S. Government tagging all of these absentee ballots and going through them one after one, there is nothing in that report that I am familiar with that indicated that people were voting illegally who were not entitled to. And that was out of 700-and-some absentee ballots.

So I simply state that there is a legitimate reason for the high number. And that is because it is a very competitive race; that is because it is a rural area; and that is because, also, that there are many sick and infirm people, and some who work out of the county.

Let me, for fear I run out of time, let me rush on to one other thing about Perry County, and that is, that Perry County is a county ever since 1972, I do not know of a single year that there has not been a squabble after the election, since 1972. And that is because the races are generally—the critical races are often close, and the competition between the parties is very intense.

Did you want to ask me something, Senator?

Senator **Denton**. No, sir.

Mr. **Sanders**. OK.

And that is the background from which we start.

Now, there are two groups in Perry County, two major groups, one is the group that has been in power over the years; the other one is a group that has recently come to power in Perry County.

One of those groups is predominantly black; another one is predominantly white. Because of the closeness of the election, a couple of hundred votes shifted either way can mean victory or defeat. And that is the background with which we start.

It just so happens that Roy Johnson, who is the district attorney there, is an intricate part of one of those groups; and so is Mr. Phillips. They both involved with one of those groups.

It is that background with which we were dealing with the *Perry County* case.

Now I want to talk briefly about what the impact has been, and why that impact has been the case.

No. 1, there are four areas that I can see where there has been a major impact. One of them is on voter registration. In fact, one lady, when a lady named Siola Miller, who was trying to get her to register, approached her, and said to her that she ought to register to vote, and what she said to her was, child, I do not want to get you in trouble. And she asked her about that. And she was explaining that she may end up going to jail for simply trying to register her. And that is one indication.

Another problem has to do with people who vote at the polls. I was at a church over in Marion several months ago when a little lady came up to me and said, Reverend, is it all right to vote next time? And I said, of course, it is all right to vote next time. And in response, she said something else, and I asked her why she thought that, and she said that a number of people said that it was getting dangerous to vote, and she was concerned about it, and so she wanted to ask me.

And the fact that she called me reverend was not unusually, because a good number of people think I look like a minister and act like a minister and call me reverend. But she was talking to me.

Senator HEFLIN. Are you a reverend?

Mr. SANDERS. No, sir. I prayed about it, Judge. But I did not quite get there.

Another impact is on absentee voters. Now several absentee voters testified during trial that they would not vote again. And I think that that is understandable. Simply from the point of view that you have to ask yourself is it worth voting if you may be visited by the FBI? And I think that that is critical.

And in this instance, a number of people, several hundred people, were visited by the FBI and interrogated, in homes and on the jobs, at one point or another.

The last category is one of community organizer; and it is most critical. Because the community organizers are the key group that get absentee ballots. Few people simply vote absentee ballots on their own. It is because somebody knows that they are sick. Somebody knows that they are out of county; and encourages them to vote abentee. It is not a process that somebody says, well, I am going to be out of town. Many people will simply forgo voting if someone does not encourage them to vote either at the polls or by ansentee.

And this group is the group that has been most affected. That group has been most affected because the people who were indicted were community organizers, and community workers, Albert Turner, Evelyn Turner, and Spencer Hogue. This case went beyond Perry County, because the publicity was so great.

But those are the people who have the great reluctance about helping to assist people in voting. There are a few factors why that is true.

One of them is because the whole matter was so widely publicized.

A second one is, the way the investigation took place in a number of things. No. 1, there was preelection surveillance, which was highly unusual.

In fact one of the meetings that people were having the night before, there was an FBI agent out there watching them with some detection devices for listening to them. It just so happened that somebody came up and saw them out there.

That concerns people that cannot even have a meeting without being under surveillance.

The second thing, and I think perhaps the most devastating thing, was the tagging of absentee ballots. In Alabama your ballot is secret, because your first ballot is in an—I mean, the ballot has no markings on it except those which you put on it. It is in an envelope that has no markings on it. The outside ballot does have, where you sign it and put various information.

Since they were able to tag each of those absentee ballots, so the ballot had a number, the inside envelope had a number and the outside envelope had a number, it became very, very critical, because the FBI then went to a number of people and spoke to those people about who they had voted for.

Now, in a city that might not make much difference. But in a rural area, where many of those people only voted because they were assured that nobody would know how they were voting, that becomes very critical.

In a rural area—in a city, you may not see the powerful people ever. But in a rural area you see them almost every time you go to town, or they live down the road from you.

So it becomes very critical that those ballots were tagged, and that the FBI took those ballots and said, is this how you are voting?

Many people are afraid to vote, still, even after all these years. Many of them are on welfare. Many of them are on food stamps. Many are on other kinds of way, and it is just a serious problem.

Another problem that had to do with it was the extent of the investigation. Now, I believe Mr. Sessions testified that they simply took the 75 ballots that had markings on it, and those were the ones they investigated. But there were some ballots, of course, that were investigated that were not among those 75. And if I am correct, I believe that I raised this question with Mr. E.T. Rolison, and he told me that in addition to those ballots, they took a group of ballots, at random sample. And I asked him about that, this random sample. And he said, well, there wasn't any problem in the white community. The problem was in the black community.

And they took those—I believe he told me it was 75 ballots at random sample; and went to each of those people to talk to them. And these were ballots that had no markings on them whatsoever.

In addition to the extent of the investigation, the trip to Mobile had a very powerful impact upon people. And I think—one of the trips—I mean, the grand jury one time met in Selma. And this is where some of the people who were targeted, who were young, who could get around, were able to go to Selma, which is roughly 30 miles away.

But on the other hand, when the elderly people and some other people were taken, they were taken to Mobile overnight, which is 168 miles away. And at the particular time they were taken, they were taken on a bus; they were indicated that they must ride the bus; and they got on the bus and got there and found that a number of law enforcement officers were standing around.

And I think the irony of this is that the bus was parked almost at the point where Jimmy Lee Jackson got shot. And Jimmy Lee Jackson was a young black man in 1965 who had been involved in a demonstration trying to get the right to vote. And in the process what he did, after the march did not take place, a number of State troopers had ended up beating people at random. His 84-year-old grandfather had been hit on the head. And he went and tried to take him to the doctor. And the State trooper said he could not take him. They stood in the door and stopped him.

And the reason this is important, and I tell that, is because every year they hold a Jimmy Lee Jackson celebration in Marion, where they talk about this and raise this issue.

But in any event, what happened on that occasion was, Jimmy Lee Jackson, when he was told a second time that he could not take his grandfather to the doctor, two of the law enforcement officers began to beat him. He was down on the floor. And as they beat him, his mother came up. And one of them turned around and hit her and knocked her off and she was trying to pull them off.

Then, after they beat him awhile on a floor, they stood him up in the corner, and one of them put a gun in his side and shot him one time. And they were holding him there. And then they shot him a second time.

Senator DENTON. What incident is this, in what connection?

Mr. SANDERS. It is in connection with Perry County.

Senator DENTON. I understand that. But you have been making the case that the whole situation was one in which the Government has been heavyhanded, and unjustified in coming in there. Now where are we getting this man shot in the side?

Mr. SANDERS. Well, the point I was making was that the bus that took the people to Mobile, with the law enforcement officers standing around, was in close proximity to the spot that Jimmy Lee Jackson was shot in 1965 in an attempt——

Senator DENTON. I really do not think that is relevant. You have been talking for almost 15 minutes. I do not mean to be——

Mr. SANDERS. I will be glad to leave it off. But, for people who relive that every year, and have a meeting on that, that was of some significance. But I will be glad to leave it alone and go to the next point and close out, if I have your permission?

Senator DENTON. Sure.

Mr. SANDERS. I just simply want to close out with two small points.

One of them is, election workers, people who go out and solicit absentee ballots, are also concerned because the nature of the indictment that came down in this case; in that indictment it simply—some of things that it laid out there is that these people did approach citizens of Perry County and encourage them to vote absentee ballots. It did assist citizens to execute and submit absentee ballots. Did visit voters in their home.

All of these are normal activities that were set out in that indictment as part of the conspiracy in this particular case. So election workers, people who go out, look at that indictment, and it was sent out to a number of people, and have some serious concern.

The last thing, of course, is the number of counts in the indictment. It was spread across the newspaprs. It was spread across television. Everything. That there were 82 counts. And at the moment, when they finally went to the jury, there was far less counts. Some 50 counts were no longer there. But of course that was not spread across the newspapers.

All of that had a very profound impact, and I simply say that because it has a tremendous effect. I go to meetings almost every day. And I know it had a tremendous impact.

Senator DENTON. Are you finished?

Mr. SANDERS. I am through.

Senator DENTON. Well, you referred to things being spread in the newspapers. Mr. J.L. Chestnut, Jr., writing in the Selma Times Journal, is he a law partner of yours?

Mr. **Sanders**. Yes, he is.

Senator **Denton**. Was he one of the defense attorneys in the *Perry County* case?

Mr. **Sanders**. Yes, he was.

Senator **Denton**. September 22, 1985, under a headline, Uncle Tomism to be dealt with, by J.L. Chestnut, Jr. His article begins, certain blacks can be so sickening they make it difficult to contain oneself. Perry County Commissioner Reese Billingslea and Tax Assessor Warren Kynard continue to spout the nonsense that the one-sided, racist Federal vote fraud investigation and prosecution in Perry County were justified and somehow fair. Neither the Feds, Billingslea, nor Kynard had voiced a single criticism of white political skulduggery in Perry County.

Do you believe that was said here, that the Reagan administration—Senator Jeremiah Denton, responding to whites such as Cook, tried desperately to persuade the Justice Department to reject the Perry County redistricting plan.

I can bring a lawsuit against Mr. Chestnut in that paper for that. Because there is a pattern—I intend to, OK? There is a pattern in that newspaper and by Mr. Chestnut to make allegations against me from malice which are absolutely untrue.

Do you believe that Jeremiah Denton had something to do, anything to do, with persuading the Justice Department to reject the Perry County redistricting plan? I do not know anything about the Perry County redistricting plan. I did not know about the *Perry County* case until I read about it in the newspaper?

Do you actually believe otherwise?

Mr. **Sanders**. Senator Denton, let me say first that I certainly do not want to be sued, either. And I do not know whether you had a role or not. And I have never said that you had a role. But I do not know whether you had a role or not.

Senator **Denton**. You are under immunity. Nothing you say here can be held against you in the sense of a suit.

Mr. **Sanders**. Well, I do not know whether you had a role or not, Senator Denton. I do not know. And in fact, I have never made that statement.

Senator **Denton**. Well, can you answer why I would be interested in intimidating black voters against voting for me when all of the polls show that more blacks would support me that any Republican in history, I would not need 40 percent of the black vote to get as big a landslide as Senator Heflin, in fact maybe more. Because my opponent did not have that many.

And why would I want to intimidate black voters from voting? The testimony was given yesterday that it was the side from which you were coming that was trying to intimidate voters. All of the Justice Department which has testified here have said the same thing.

So if you think you are going to turn, as someone in the audience said, not representative of that 40 percent, that you are going to turn the votes around, I think you are wrong.

I think that as Mr. LaVon Phillips testified yesterday, there are more and more blacks becoming sick and tired of being intimidated into voting one way or the other. And I do not want to be elected to the Senate or to any other office with intimidated votes. That is the place where I 78 was in prison 7 years, 7 months; not the United States of America.

I can understand vote cheating and vote fraud. That has taken place in various parts of the United States. It still is, to some degree, and I am hoping we will get rid of it. But intimidation is another thing. And I do not like it. And I want that on the record.

Senator DENTON. I would ask, did you tell Albert Turner that prior to his trial—let me rephrase the question.

Is it true that Albert Turner was your campaign manager when you ran for the office you now hold?

Mr. SANDERS. Albert Turner was a person who worked very closely with me, and in Perry County, he certainly served in that role.

Senator DENTON. So do you believe you can be impartial as far as his case is concerned?

Mr. SANDERS. Senator Denton, I never felt that I should be impartial as far as Mr. Turner's case is concerned. And the reason for that is that I had known Mr. Turner over the years. And I had known him to be a very dedicated and hard-working person who believed very firmly in the right to vote. And that he worked very hard to see that all kinds of people would be able to vote. I did not feel that I needed to be impartial.

I was representing him, and I do not think you need to be impartial when you are representing somebody.

Senator DENTON. The immunity I told you about a little while ago, as you know better than I since I am not a lawyer, is only with respect to suing for slander; that sort of thing. This question is not in that category.

Did you ever warn Albert Turner that if he did not watch his handling of absentee ballots, he was going to get into serious trouble?

Mr. SANDERS. No, what we did——

Senator DENTON. Excuse me; the answer was no?

Mr. SANDERS. Did I ever warn him?

Senator DENTON. Did you ever warn Albert Turner that if he did not watch his handling of absentee ballots, he was going to get into serious trouble?

Mr. SANDERS. No; what I did—I would be glad to tell you, Senator, what I did.

The people in Perry County, I have met with them to discuss with them the legalities and illegalities of handling absentee ballots. And we went over that in detail.

And in going over that in detail, I encouraged them to avoid even any appearances of impropriety; and I believe they did that.

Senator DENTON. Let me ask you if you ever—you have alleged in your prepared statement that Mr. Sessions failed to investigate allegations of white voter fraud in the 1984 elections.

Can you name specific instances of such offenses which Mr. Sessions failed to prosecute?

Mr. SANDERS. Yes, sir; in fact, Mr. Turner, whenever he testified, on yesterday, raised a series of those. And one of those, of course, involved Mayor Andrew Hayden.

Senator DENTON. No; Mr. Kimbrough testified yesterday that he advised Mr. Sessions not to take on this voter-fraud case in Perry County because he would simply get himself in trouble.

Mr. Kimbrough did not have any doubt that he expressed, in disagreement with the Justice Department, that it should be prosecuted, but only that he would be smeared and get into trouble if he did not.

Also, Mr. Sessions has been cited as having a remarkably heavy caseload, which he put unusually, extraordinary heavy work in. So the fact that he did come out there and investigate one seems to have turned you against him. You are rather selective about the ones you want him to investigate.

You criticized the fact that the grand jury in the Perry County investigation first convened in Mobile rather than in Selma. As a lawyer, are you aware that at that time no grand jury had ever been convened outside Mobile in that Federal district?

Mr. SANDERS. No; but I am also aware that the grand jury did meet in Selma, and did take testimony. And they took that testimony from young, capable people who were able to go back and forth. On this very case.

Senator DENTON. Did J.L. Chestnut ever warn Albert Turner that if he did not watch his handling of absentee ballots he was going to get into serious trouble?

Mr. SANDERS. I am not familiar with that at all, Senator Denton.

Senator DENTON. Well, for your information, I do have a sworn affidavit from E.T. Rolison, Jr., assistant U.S. attorney, swearing that he did.

Mr. SANDERS. The idea—I did not do anything such.

Senator DENTON. Here is what the affidavit says, in part: "Prior to the trial of Albert Turner, Jr., I had a conversation with Hank Sanders, Jr., about Albert Turner, Jr., and the 1982 election. I told Hank Sanders, Jr., that I had received information that J.L. Chestnut had publicly warned Albert Turner that if he did not watch his handling of the absentee ballots, he was going to get into serious trouble."

Hank Sanders told me that I had received inaccurate information in that it was not J.L. Chestnut that had given Albert Turner, Jr., the warning, but it was he who had given the warning. And it is signed E.T. Rolison, Jr.

Mr. SANDERS. No—yes, I have a comment. I have never told him that I gave Albert Turner a warning, that if he did not, he was going to get into serious trouble.

Senator DENTON. Do you know Jeff Sessions personally?

Mr. SANDERS. I have met him a number of times.

Senator DENTON. Were you present when Mr. Larry Thompson testified yesterday, a man who knew Mr. Sessions personally?

Mr. SANDERS. Yes; I was present when he testified.

Senator DENTON. What did you think about his testimony?

Mr. SANDERS. I thought that Mr. Thompson's knowledge of Mr. Sessions was very limited; that he worked with him in one situation dealing with one project, as I understood it; I thought that someone who had been in his office, who had seen him on a day-to-day basis, who had had a range of interaction, would have a far greater appreciation for what his problems were, and what his strengths were, and what his abilities were than someone who had worked with him in a very limited situation.

And I could understand Mr. Thompson doing that.

Senator **Denton**. Well he did work in the same line of work with him. He knew him over a period of a number of years. As a black man, I suppose he would have had some sensitivity about the task of civil rights.

But you, being of an opposite party, and involved in many articles here of an extremely political nature, I will not try to characterize with any adjectives what I think of that kind of politics, but I would say that his objectivity would certainly stand closer scrutiny than the likelihood of yours.

Senator Heflin.

Senator **Heflin**. I would like to have the affidavit made a part of the record.

Senator **Denton**. Without objection, it shall be in. It was an omission on my part.

[The following was received for the record:]

STATE OF ALABAMA:
COUNTY OF MOBILE:

AFFIDAVIT

Before me, the undersigned authority, personally appeared E. T. Rolison, Jr., Assistant United States Attorney, Southern District of Alabama, and upon being duly sworn, deposes and says as follows:

That prior to the trial of Albert Turner, Jr., I had a conversation with Hank Sanders, Jr., about Albert Turner, Jr., and the 1982 election. I told Hank Sanders, Jr., that I had received information that J. L. Chestnut had publicly warned Albert Turner that if he did not watch his handling of the absentee ballots, he was going to get into serious trouble. Hank Sanders told me that I had received inaccurate information in that it was not J. L. Chestnut that had given Albert Turner, Jr., the warning but it was he who had given the warning.

ET Rolison Jr
E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY

Sworn to and subscribed before me
this 10th day of March, 1986.

Linda R. Nelson
Notary Public
State of Alabama at Large

MY COMMISSION EXPIRES 11/2/88

STATE OF ALABAMA:

COUNTY OF MOBILE:

My name is E. T. Rolison, Jr. I have been with the U. S. Attorney's Office in the Southern District of Alabama since 1975. I understand that Thomas Figures has today testified before the Senate Judiciary Committee hearing that I on occasion had referred to him in a derogatory manner as a "boy". That statement is a flat out lie and I have never referred to him by anything other than his given name.

E T Rolison Jr
E. T. ROLISON, JR.

Sworn to and subscribed before me
this 20th day of March, 1986.

Linda L. Nelson
Notary Public
State of Alabama at Large
MY COMMISSION EXPIRES 11/2/88

[illegible]

STATE OF ALABAMA:

COUNTY OF MOBILE:

My name is Ginny S. Granade. I have been an Assistant United States Attorney since 1977 in the Southern District of Alabama. It is my understanding that during the confirmation hearing Mr. Thomas Figures stated that on one occasion, in my presence, Mr. Sessions referred to Mr. Figures as "boy". I have never heard Mr. Sessions refer to Mr. Figures as "boy" or to call him by anything other than his given name.

Ginny S. Granade
GINNY S. GRANADE

Sworn to and subscribed before me
this 20th day of March, 1986.

Linda R. Nelson
Notary Public
State of Alabama at Large

MY COMMISSION EXPIRES 11/2/88

Senator **Denton**. You do have questions, do you not, Senator?

Senator **Heflin**. Yes; I was just reading.

Senator **Denton**. Yes, sir.

Senator **Heflin**. This—maybe it would save time just to read it aloud again.

E.T. Rolison said that: "prior to the trial of Albert Turner, Jr., I had a conversation with Hank Sanders, Jr., about Albert Turner, Jr., and the 1982 election. I told Hank Sanders, Jr., that I had received information that J.L. Chestnut had publicly warned Albert Turner that if he did not watch his handling of the absentee ballots, he was going to get into serious trouble. Hank Sanders told me that I had received inaccurate information in that it was not J.L. Chestnut that had given Albert Turner, Jr., the warning but it was he who had given the warning."

Do you recall having that conversation with Mr. E.T. Rolison?

Mr. **Sanders**. No; in fact, there are several things. Albert Turner, Jr., is the son of the Albert Turner who was involved in this case. But I assume that they are talking about Albert Turner. And second thing, I am not a junior; I am not a junior at all.

But I did not have—I never told Mr. Rolison that I warned Albert Turner, or that Chest did not warn—J.L. Chestnut——

Senator **Heflin**. Do you recall any conversation with Mr. Rolison about the 1982 elections in which there was some discussion of absentee balloting, and Albert Turner, who was a defendant in the case?

Mr. **Sanders**. Yes; on one occasion I did. In fact what I told Mr. Rolison on that occasion was that I knew that nothing had been done wrong, because I was the person who had met wtih them after 1982. And I said, "Let us sit down. Bring your workers in."

And I went over in the Marion courthouse—I mean in the Perry County courthouse in Marion and held a session on what can be done and what cannot be done in that situation.

And I told him that that was why I knew that they had not done anything wrong in that case.

Now, that is the only conversation I have had with him about that.

Senator **Heflin**. That is all.

Senator **Denton**. Senator East.

Senator **East**. I have no questions, Mr. Chairman.

Senator **Denton**. I have no further questions, Senator Sanders. Hold on just a moment, please.

We would ask that you please remain available for further questions.

Rev. O.C. Dobynes.

Reverend **Dobynes**. Mr. Chairman, Senator Heflin, members, I am O.C. Dobynes. I am being duly sworn and disposed to say the following. However, due to some errors, I would like for you to go with me to paragraph 5—I am sorry, paragraph 6:

When I arrived in Maryland for the departure site early in October I saw a bus surrounded by about six Alabama State troopers, Maryland city policemen, about nine FBI agents, and game wardens. It looked like an armed camp. The streets around the courthouse, and about eight officers stood on different corners, some with their guns ready to be drawn.

It should have been really far drawn—not drawn——

Senator **Denton**. Excuse me, sir. Where are you? I could not get it fast enough.

Reverend **Dobynes**. Paragraph 6.

Senator **Denton**. OK. On page 2?

If we have the same copy. Yeah, that is paragraph 7 on 9.

Reverend **Dobynes**. Well——

Senator **Denton**. It is OK. I just want to get——

Reverend **Dobynes** [continuing]. All right. I want this straightened out.

Senator **Denton**. Where are you there, sir, then exactly? I still have not found it?

I have—their guns drawn, I have that.

Reverend **Dobynes**. Ready to be drawn.

Senator **Denton**. All right. Should be ready to be drawn.

Reverend **Dobynes**. Yes.

Senator **Denton**. With their guns ready to be drawn.

Reverend **Dobynes**. One more error that I should find—or did I lose a sheet some where?

Senator **Denton**. While you are looking, Reverend Dobynes, if you do not mind, since the television cameras have rolled up their tents and gone away, having heard from Mr. Figures, but Senator Heflin, as he faithfully has, is still here; and has been. I must mention that we do have—we have just received affidavits by telephone with the notary public, have made sworn statements, and they refer to the charge by Mr. Figures that he was referred to as a boy.

We will have to wait for the final copy of the affidavit. So go ahead, Reverend Dobynes.

Reverend **Dobynes**. The latter part of paragraph 6, two more police cars escorted a bus nearly 20 minutes out of the city limit of Marion.

Senator **Denton**. Out of the city limits?

Reverend **Dobynes**. Out of the city limit of Marion; not from Marion to Mobile.

Mr. Chairman.

Senator **Denton**. Yes, sir.

Reverend **Dobynes**. Can I go on with my statement?

Senator **Denton**. Sure.

Reverend **Dobynes**. I am a resident of Perry County, AL.

Can I submit my affidavits?

Senator **Denton**. Is that what you just——

Reverend **Dobynes**. No, no, no; with the correction that I have asked for, can I submit this as a part of the record?

Senator **Denton**. Since there is a delay, I will read this now—final form from Diana Waterman, general counsel, Senate Judiciary Committee, who processed this affidavit from Ginny S. Granade. Which says:

> "My name is Ginny S. Granade. I have been an Assistant U.S. Attorney since 1977 in the Southern District of Alabama. It is my understanding that during the confirmation hearing Mr. Thomas Figures stated that on one occasion, in my presence, Mr. Sessions referred to Mr. Figures as "boy."
>
> I have never heard Mr. Sessions refer to Mr. Figures as "boy" or to call him by anything other than his given name.
>
> Signed by Ginny S. Granade.

And I hope that some of the staffers will notify Senator Kennedy of this.

The other affidavit is from Mr. E.T. Rolison, Jr.

> My name is E.T. Rolison, Jr. I have been with the U.S. Attorney's office in the Southern District of Alabama since 1975. I understand that Thomas Figures has today testified before the Senate Judiciary Committee hearing that I, on occasion, had referred to him in a derogatory manner as a "boy."
>
> That statement is a flat-out lie, and I never referred to him by anything other than his given name. Signed, E.T. Rolison, Jr.

We have received the telefax, notarized versions of those statements, which are being reproduced now.

I am sorry to have interrupted you, Reverend Dobynes. But it is 4:30, and Senator Kennedy and the television cameras left. I do not have any doubt about how that will be covered in the newspapers—or rather, on television tomorrow—but for what it is worth, I desperately offer it at this point.

Go ahead, Reverend.

Senator HEFLIN. Well, now, I may be too judicial and technical in this instance. And since there is going to be time involved in this, if you have a telefax, but an affidavit out to have a signature of the affiant affixed to it.

Senator DENTON. We have them.

Senator HEFLIN. It may well be. I have not seen that, and it may well satisfy the technical requirements. But I think that, due to the fact that you will have time for a record being prepared and other things, that a proper affidavit ought to be submitted to verify any type of thing, and it ought to appear in some manner by which it can be properly verified to meet the technical requirements for submission to the committee.

And I am sure that there is time later for that to be done.

Senator DENTON. Yes, sir; I made that announcement at the risk that that would not be done. It is done now. But I thought the timeliness of it was important.

Copies of it are being distributed now, with signatures, and a notary public seal, and signature.

Mr. Figures should be given a copy.

I am sorry, Reverend Dobynes, but that is an important item. We have newspeople that leave, and have to leave. And this man is being tried–that is, Mr. Sessions–in the media, because the Senators do not come here, except for some. And they are not going to be aware–they have no idea of what is going on here except what they read.

The majority leader asks me about that every day. So we are at the mercy of what is printed. And I am not terriby disappointed about yesterday.

Have you finished making your technical corrections, Reverend Dobynes?

Reverend DOBYNES. So I did while you were talking and I asked that with the proper corrections, they would enter it into the record. Then Senator Heflin said they would.

Senator DENTON. All right, it will be entered without objection.

[Statement follows:]

Testimony of
Reverend O.C. Dobynes
# of Perry County, Alabama

My name is O.C. Dobynes. I appreciate this opportunity to testify before the Senate Judiciary Committee today about my experience as a witness in the prosecution of Albert and Evelyn Turner and Spencer Hogue by Jeff Sessions.

I am a retired school teacher and a pastor for a couple of small churches in rural West Alabama. I have lived in Perry County all my life and have been deeply involved in county affairs for over 30 years.

I ran for a seat on the Perry County Commission on September 4, 1984. This election later provided the basis for the Turner and Hogue prosecutions. My opponent, Reverend Ward, was elected to the Commission.

I first learned of the absentee ballot investigation through the news media, which was reporting all sorts of allegations against Albert Turner. A few days after the election I saw Mary Pryor, a former student of mine, who said, "Mr. Dobynes, the FBI brought my absentee ballot by my house and it had been changed. Your name was crossed out and Mr. Ward's name had an 'X' by it." She said she had voted for me and asked who I had given her ballot to. I told her I mailed it at the U.S. Post Office in Marion to the Circuit Clerk's Office and didn't know how the ballot got changed.

Later that month Roy Johnson, District Attorney of Perry County, and an FBI agent came to my home to question me about the absentee balloting. I said I would only talk in a court of law, and the FBI agent said he would have me subpoenaed.

When the subpoena arrived, an attached instruction sheet announced that all the witnessed from Marion would be transported to the federal courthouse in Mobile by chartered bus. I was also instructed to bring personal items for an overnight stay.

When I arrived at the Marion departure site in early October, I saw a bus surrounded by six Alabama State Troopers, three or four Marion city policemen, about nine FBI agents, and four state game wardens. It looked like an armed camp. The street around the courthouse was blocked off and about eight officers stood on different corners with their guns drawn. I learned that law enforcement officers surrounded the city while the buses were being loaded with witnesses. It was one of the most unusual and confusing scenes I have ever witnessed. Approximately 25 people - many of them old and enfeebled and most of them frightened to the core - were loaded onto a bus under the watchful eye of more than 20 armed police officers. Two marked police cars escorted the bus on its nearly five hour journey to Mobile.

I kept asking myself what all these police officers were doing here? Surely Jeff Sessions was not worried that anyone would attack the bus. And witnesses aboard the bus, like 93 - year - old Red Jackson who can barely see or hear and 84 - year - old Pearl Brown were certainly not dangerous.

This atmosphere of fear and intimidations continued throughout the trip. When we arrived in Mobile, we were taken to a different hotel than the one we were told we'd be staying at. The FBI agents said they would conduct interviews with us later in our rooms. I, however, was not interviewed. The next morning after breakfast I was told by District Attorney Johnson and a man he introduced as Federal Marshall Gary Clem that I was not interviewed or given my expense money the night before as promised because I wasn't in my room when they came by. The statement disturbed me because I hadn't left my room all night.

They then asked me to ride over to the courthouse with them. After getting in the car Agent Clem informed me that Mary Pryor told him she had given me her absentee ballot. I replied that it was true that I had mailed it at the Marion post office. Agent Clem said that he personally saw Albert Turner put Mrs. Pryor's ballot in the mail the night before the election. When I said that that was impossible, Agent Clem changed the subject and said he had heard I was coaching the witnesses on the bus to Mobile and said that he "would not tolerate that."

I was the last witness to be called that afternoon. The federal attorney asked me what I knew—about the "voting fraud" and Mary Pryor's absentee ballot? Could I explain how Mrs. Pryor's ballot had been changed.? And had I had given the ballot to Albert Turner? The long hours, the difficult travel and the intense pressure the witnesses were placed under took a toll on the elderly witnesses. Red Jackson had a stroke and another elderly woman suffered a heart attack.

Mr. Turner was later indicted. Based upon grand jury testimony I was subpoenaed as a witness for the defense. The FBI wasn't through with me, however. Three times agents cam to my home accompanied by Lavon Phillips, the Assistant D.A., and tried to get me to change my testimony. I told them I would not alter my grand jury testimony because it was the truth.

I can understand Mr. Session's interest in determining if the defendants were guilty of voting fraud. However, I could not then and cannot now understand how justice was served or protected by surrounding witnesses with armed police, threatening witnesses and pressuring them to change their testimony. I hope this Committee carefully considers this issue before it votes on the confirmation of Jeff Sessions.

Paragraph 2: When I arrived in Marion for the departure site early in October 1984, I saw a bus surrounded by about 6 Alabama State Troopers, Marion City policemen, about 9 F.B.I. agents and about 3 or 4 game wardens. It looked like an armed camp. The street on the side of the court house was filled with an excessive amount of uniformed officers on two corners, some with their gun ready to be drawn.

Paragraph 6: Uniformed officers escorted the bus about 20 miles out of the City of Marion.

Senator DENTON. Did you want to read your statement or are you changing previously sworn testimony? Why did you not change it before it was presented as sworn testimony to the committee?

Reverend DOBYNES. This was typed for me and I do not know how some of it got like this. Maybe my handwriting is not that good. These changes were made.

Senator DENTON. Well, it will be entered in the record as in the context, which you have made the corrections. I do not know the technicalities, Senator Heflin, with respect to having received testimony to which was referred yesterday, and then the change made when the gentleman comes here. But before, as he is actually testifying, perhaps you can clarify that.

Senator HEFLIN. Well, I do not claim to know all of the answers to all of this right now, but I assume that any question about it, questions can be raised as to the sequence of events and the earlier statement and the corrected statements, and his explanation and inferences drawn therefrom as they are drawn from different documents, and different testimony, and different people interpret them in different ways.

Senator DENTON. Thank you, Senator Heflin. You are a very valuable man to have here.

Reverend Dobynes, regarding the boarding of grand jury witnesses on the bus, in Marion, AL, were you aware that the FBI had learned of threats to prevent the witnesses, some witnesses from boarding the bus?

Reverend DOBYNES. I did not quite understand your question.

Senator DENTON. Did you know that the FBI had learned of threats to prevent witnesses from boarding the bus, just as threats were made against Mr. LaVon Williams and by affidavit, by others, to others?

Reverend DOBYNES. No. I had heard some hearsay talk that I could not believe by no means those threats were given by M. Albert Turner. I heard from some outside source talking. But I certainly believe those threats were untrue and I do not see how they could have been no way founded because I have never known M. Albert Turner to give those kinds of threats.

Senator DENTON. Well, if you believed as the FBI did, that those threats were true, would you not expect there to be some kind of police protection?

Reverend DOBYNES. No, I do not know. You asked the question, do you think they needed some kind of protection?

Senator DENTON. And do you think the protection afforded was excessive? I will ask you that question. Do you think the protection afforded was excessive——

Reverend DOBYNES. Certainly.

Senator DENTON [continuing]. In the light of—you will have to just assume that the threats were made, because the FBI was persuaded they were—and under that assumption, do you think that the protection afforded was excessive?

Reverend DOBYNES. I do think it was; more than needed, sir.

Senator DENTON. All right, the chief of police has submitted an affidavit which reads as follows, Senator Heflin, and Senator East. "I am John Anderson, Chief of Police, Marion County, sworn and subscribed before Sabrah H. Agee, notary public, State of Alabama, at-large on the 17th day of March, 1986."

Senator **Heflin**. Is this the same affidavit referred to—I believe that you read from Anderson—is this a different one?

Senator **Denton**. It is the same affidavit. We did not ever read it in completion.

Senator **Heflin**. There was some reference made to it?

Senator **Denton**. Yes, sir, it is the same one.

Senator **Heflin**. I think I have got a copy of it.

Senator **Denton**. I will read in part:

> On October 21, 1984, Special Agent Leslie Sue of the Federal Bureau of Investigation contacted my office and informed me that he had received information that was going to be an attempt to prevent the Federal Grand Jury witnesses from going to Mobile to testify before the Grand Jury concerning the Perry County vote fraud investigation.
>
> When I received this information, it was decided that the police department would provide whatever security was necessary to protect these witnesses from harrassment.
>
> On October 22, 1984, my department supplied two officers, Lt. Don Caver, and Patrolman Gabriel Jones as security, while the witnesses were boarding the bus bound for Mobile. Also on the scene was conservation officer Mike Nichols who was assigned to Perry County at that time and who worked out of the Marion police department.
>
> Three FBI agents were also present at the loading site, one was the aforementioned special agent, Leslie Sue, and two were agents from Montgomery. I do not know the names of the Montgomery agents. Captain George Jones of the Alabama State Troopers came to Marion but waited inside the Marion police department along with three other troopers. The bus loading zone was at a public parking next to the U.S. Post Office, directly across the street from the Perry County Courthouse, and after all, the Grand Jury witnesses were loaded on the bus, the Alabama state troopers drove over to the loading site and waited for the bus to leave for Mobile.

In other words, they were the escort for the bus on motorcycles apparently.

> The only uniformed law enforcement personnel in the immediate vicinity of the bus, were Lt. Caber, and Officer Jones of the Marion Police Department.
>
> That is what this affidavit essentially says.

And therefore, I question the excessiveness of the security provided.

Reverend **Dobynes**. Standing by the door of the bus, yes, you will find, I believe, Mr. Jones, but on the corner, across the street from the bus, on the—just across the street from where we loaded between the Post Office and the Church, there were some officers, more than these officers that are in this statement, sir.

Senator **Denton**. Were they somehow involved in the loading operation, or were they passing by?

Reverend **Dobynes**. Standing by on the corner.

Senator **Denton**. Well, I would be glad to receive any information specific about further people that were there. All I have is that affidavit and your corrected testimony.

We have LaVon Phillips' testimony from yesterday.

Senator Heflin.

Senator **Heflin**. I do not believe that I have any questions.

Senator **Denton**. Senator East.

Senator **East**. No, I have nothing.

Senator **Denton**. Reverend Dobynes, you are excused sir, thank you.

[The witness was excused.]

Senator DENTON. The last gentleman on this panel is Deval L. Patrick, assistant counsel, Legal Defense Fund, New York, NY.

Mr. PATRICK. Thank you, Mr. Chairman.

My name is Deval Patrick and I am assistant counsel at the NAACP Legal Defense Fund. Together with two of my colleagues, I defended Spencer Hogue, in what has been referred to over the last several days of these proceedings as the *Perry County* case.

As a preliminary matter, Mr. Chairman and members of the committee, I would like to formally introduce as a part of the record, several materials which I understand have been circulated to the committee already.

First, the statement and affidavit of Morton Stavis, who is cofounder and president of the Center for Constitutional Rights, and who could not be here today because of other responsibilities on behalf of his new client, President Aquino of the Philippnes, in New York.

I would ask that those two items be made formally a part of the record at this time.

Senator DENTON. Without objection, they shall be made a part of the record.

[Statement follows:]

Statement of Morton Stavis
on behalf of
The Center for Constitutional Rights

Mr. Chairman and Members of the Committee:

My name is Morton Stavis. I am a co-founder of and staff attorney at the Center for Constitutional Rights in New York City.

Throughout several months of pretrial proceedings and several weeks of trial, I represented Ms. Evelyn Turner against charges of conspiracy, mail fraud and voting-more-than-once in the United States District Court for the Southern District of Alabama. The United States Attorney for the Southern District, Jeff B. Sessions, III, conducted the prosecution in that case.

In connection with the Committee's consideration of Mr. Sessions for appointment to the federal bench, I wish to bring six issues to the Committee's attention:

First, the investigation of the case was characterized by fear and intimidation of the witnesses, most of whom were poor, elderly and illiterate, many of whom were ailing, all of whom were black. Nevertheless, the FBI questioned them in a way calculated to produce the answers they wanted, often revisiting witnesses as many as four or five times until they got the answers they wanted. Mr. Sessions conducted that investigation.

Second, during the selection of the jury, the prosecution used its peremptory challenges against black potential jurors, offering a hollow explanation when challeneged. The prosecution also attempted to have the cse tried in Mobile -- nearly 200 miles from the place where the facts occurred and patently inconvenient to all the witnesses -- for the sole discernible reason that the concentration of blacks in the Mobile jury pool was considerably less than it was in Selma, the more appropriate venue.

Third, just before trial, after the court announced that the jury would be sequestered, the prosecution filed an unnecessary motion for sequestration which included a strongly worded personal attack on the defense attorneys. It was filed on the Friday before trial, receiving substantial press coverage throughout the weekend, for the sole aparent purpose of inciting adverse pretrial publicity and evading the gag order then in effect.

Fourth, before the trial began, the prosecution repeatedly obstructed the defense lawyers in our attempts to examine the government's evidence. Moreover, notwithstanding its obligation to do so, the government failed to produce before trial FBI notes of a witness that were clearly exculpatory. This was discovered only through examination of an FBI agent during trial.

Fifth, contrary to the instructions of the federal magistrate as well as its own representations on the record, the prosecution introduced evidence solely to show that some ballots may have been improperly notarized. This was significant because, as the magistrate acknowledged, Mr. Sessions' office has never followed up on any complaints that voter activists supported by whites have improperly notarized absentee ballots.

Sixth, in the course of trial, one of my colleagues was summarily held in contempt of court. After the defendants were acquitted, I represented my colleague in appeal of the contempt order. Mr. Sessions' office filed a brief in which the argument on the merits consisted of ten conclusory sentences. The brief was entirely unprofessional.

These are but some of the issues with which I am familiar as a result of that trial, and that cause me to question whether Mr. Sessions has the temperament, judgment and fairness appropriate to a federal judge.

Mr. **Patrick**. Second, the statement already submitted and the affidavit of Lani Guinier, who is a colleague of mine at the Legal Defense Fund, and was my cocounsel in the trial last summer of the *Perry County* case. These materials have also been made available to the committee.

Senator **Denton**. Without objection, it shall be made a part of the record.

[The information follows:]

ORIGINAL

IN THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

In the Matter of the Nomination of
JEFFERSON BEAUREGARD SESSIONS, III
for Appointment to the United States District
Court for the Southern District of Alabama

AFFIDAVIT OF MORTON STAVIS

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, MORTON STAVIS, being duly sworn, depose and say as follows:

1. I am co-founder of and an attorney at the Center for Constitutional Rights in New York City, where my practice over the past 20 years has involved a wide variety of civil rights and constitutional issues. Before joining the Center, I was in private practice in New Jersey, though nonetheless active and interested in matters similar to my work at the Center. I have been a member of the Bar for 50 years.

2. I defended Evelyn Turner in a trial in June of 1985 in the Southern District of Alabama. The charges against Mrs. Turner were conspiracy, mail fraud and voting-more-than-once, arising out of her and her husband's extensive voter registration and absentee voting assistance in Perry County, Alabama, the community in which she lives. The government was

represented by Jeff B. Sessions, III, the United States Attorney. Mr. Sessions' supervision of the case was extremely poor.

3. Early in the proceedings, the judge imposed a "gag" order on the lawyers for the prosecution and the defense. (See Appendix B.) The week before trial, the judge announced, over defense objections, that he intended to sequester the jury. Several days after that ruling, Mr. Sessions' office filed a motion for sequestration (termed a "Response to Objections to Sequestration and Request for Protective Action") which included a strongly worded personal attack on the integrity and conduct of defense counsel. (See Appendix C.) That motion was filed on the Friday before trial and received substantial press coverage over the weekend. That motion was unnecessary and compromised the government's obligations under the court's gag order. In my opinion, the sole purpose was to incite the wave of adverse pretrial publicity that it in fact produced.

4. Mr. Sessions supervised an FBI investigation characterized by fear and intimidation. Most of the witnesses were poor, black, elderly, illiterate and often ailing. Our own interviews of the witnesses indicated that the FBI had questioned these witnesses in a way calculated to produce the answers the government wanted. None of the agents had experience in interviewing 80-year-old black women. (See, e.g., Testimony of Agent Bodman.) Some of the witnesses were asked over the telephone to explain changes on a ballot they could not see (see, e.g., Testimony of Murphy Reed and James Sanders);

some were asked to examine their ballots without their glasses on (see, e.g., Testimony of Maggie Fuller); some were paid as many as four or five visits until they gave the desired answer (see, e.g., Testimony of Mattie Perry). It is not difficult to understand, as a result, why some witnesses (including several interviewed by Sessions himself) gave testimony on the stand that appeared to the government to contradict earlier statements.

5. Mr. Sessions' office displayed similar disregard for the witnesses in his manner of bringing them before the Grand Jury. Though the Grand Jury meets in both Selma, which is close to Perry County, and Mobile, which is distant, Mr. Sessions called these witnesses to testify when the Grand Jury convened in Mobile. The witnesses were taken en masse by bus to Mobile. The bus was surrounded by police in Marion, and had an armed police escort from Marion to Mobile. (See Appendix C.) The bus trip, under the circumstances, had the predictable effect of intimidating the witnesses, resulting in confusion and unreliable testimony before the grand jury, and contributing, I believe, to the reluctance of the witnesses and other elderly blacks in their community ever to vote again.

The fact that many of the witnesses were required to travel to Mobile despite poor health effected the willingness of blacks to vote in the future. Mr. Sessions was largely insensitive to the health of the witnesses. Although he stationed a nurse on the bus to Mobile and provided a nurse at trial (even for witnesses who did not need one), Mr. Sessions opposed efforts to try the case in Selma rather than Mobile -- even though all of the witnesses resided within a half hour of Selma. (See Appendix D at 43-47.)

6. During the selection of the jury, the prosecution used its peremptory challenges to exclude blacks from the jury. We objected on the ground that the prosecution's challenges were racially motivated and therefore improper. The explanations offered by the prosecution were simply not credible; for example, although the government explained that it excluded certain black persons because they lived near Perry County and might have been influenced by pre-trial publicity, no whites who lived in neighboring counties were excluded.

7. During the trial, one of Mr. Sessions' assistants wrote "WITNESS LIED" or "LYING" in large red letters on a piece of paper, and placed the sheet on the edge of the jury box in such a way that it could be seen by the jury. Eventually, a spectator called this to the attention of the court and defense counsel, and the judge directed the prosecution to stop. As far as I know, Mr. Sessions never reprimanded his assistant.

8. Mr. Sessions' office made it nearly impossible for the defense to examine the ballots which were the subject of the indictment. For example, the defense asked the government to make available the ballots for our inspection during the week of May 21, 1985, when we would be in Mobile. Mr. Sessions'

office refused, stating that the ballots were in Selma and moving them would cause "chain of custody" problems. Less than two weeks later, in an attempt to arrange to see the ballots in Selma, the defense was advised that the ballots had been moved to Mobile. (See Appendix E at 7.) Moreover, even though the court ordered Mr. Sessions' office to make the ballots available to the defense (see Appendix F), his chief FBI agent would only permit us to examine one ballot at a time, and then only if we could identify both the name of the voter and the number of the ballot in advance. We were never able to examine most of the several hundred ballots, though at one point the government attempted to offer all of them into evidence at trial.

9. It is standard pretrial practice for prosecutors to turn over to the defense FBI notes of interviews with witnesses. These notes are called "302's." If such notes are at all exculpatory, the prosecution must turn them over. In the case of the witness Alma Price, the FBI conducted three interviews. In the first, on September 25, 1984, Ms. Price told the FBI that she voted for a candidate named Reese Billingslea and did not make any change on her ballot. (See Appendix G.) (Her ballot reflected a change beside the name of Reese Billingslea.) According to the notes of the second interview, on October 5, 1984, Ms. Price explained that, though she did not make the change, she directed Albert Turner, one of the defendants, to do so and that he did so in her presence. (See Appendix H.) On December 13, 1984, the FBI conducted a third interview, this

time to get the witness to confirm the content of the first interview. (See Appendix I.) Mr. Sessions' office produced the FBI 302's of the September 25 and December 13 interviews, but not that of the October 5 interview -- the one that was plainly exculpatory. The existence of that 302 was not disclosed even after the witness was put on the stand by the U. S. Attorney and adopted the exculpatory version she had previously given. It was only during subsequent cross-examination of an FBI agent that defense counsel discovered the missing 302. Thus, despite two requests by the defense, one of which specifically requested prior to trial the 302's of Alma Price by name, and the prosecution's constitutional duty to honor those requests, Mr. Sessions failed to produce material tending to show a defendant's complete innocence of one of the counts in the Indictment. (See also, Appendices J, K, L.)

10. In pretrial discovery, the defendants asked whether the FBI had identified any absentee ballots solicited by the defendants which contained alterations that the voters themselves acknowledged making or authorizing. Mr. Sessions' office did not indicate that any such exculpatory ballots existed. I understand that at a hearing before the House Judiciary Committee, the Justice Department admitted that some 20 exculpatory ballots did in fact exist.

11. On June 18, 1985, the magistrate instructed the prosecution not to introduce evidence of improper notarization because the defense had shown that evidence of such activities

by voter activists supported by whites had never been proceeded upon by Mr. Sessions' office. The prosecution acquiesced and stated that it contemplated calling no such witnesses. Nevertheless, at trial, the government put on three such witnesses -- Mary Burnett, William Wimes and Willie Lee -- whose ballots reflected no changes and who were questioned primarily about the circumstances under which the ballot was notarized.

12. The government produced no evidence on 12 of the 26 counts of mail fraud alleged against Mrs. Turner. They were dismissed outright at the close of the government's case.

13. In the course of trial, my co-counsel, Howard Moore, Jr., was summarily held in contempt of court, purportedly because he was attempting to probe the issue of selective prosecution in his cross-examination of a key witness, despite the court's order setting that subject off bounds. In my opinion, Mr. Moore was attempting only to expose the witness' bias, a subject always suitable for cross-examination under the Federal Rules, and I have made that argument at length on appeal to the Eleventh Circuit. I have also argued that the district judge's action was constitutionally flawed. In response, Mr. Sessions' office filed a brief consisting of 10 sentences of "argument"; it was devoid of any analysis of the record or caselaw, responded to none of our arguments, and was in all ways unhelpful and unprofessional.

14. In my opinion, Mr. Sessions has demonstrated himself to be at best lackluster, and at times unethical, as United

States Attorney. I see no reason to expect more of him as a federal judge. He is simply unequipped for the task. I urge this Committee not to recommend his confirmation.

Under penalty of perjury,

MORTON STAVIS

Sworn to and subscribed before
me this 12th day of March, 1986.

Franklin Siegel
NOTARY PUBLIC

My commission expires on ________________.

Franklin Siegel
Notary Public - State of New York
No. 24-8988026
Qualified in Kings County
Commission Expires March 30, 1986

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
)
vs.) CRIMINAL CASE NO. 85-00014
)
ALBERT TURNER, SPENCER HOGUE,)
JR. and EVELYN TURNER.)

ORDER RELATIVE TO PUBLICITY

This case is one which has received and will probably continue to receive substantial publicity.

The court is of the opinion that at this time it should take steps to protect the integrity of the proceedings in this case by supervising the actions of counsel. The court will use as a basis for its order DR 7-107 of the Code of Professional Responsibility of the Alabama State Bar, which should have governed the actions of counsel to this point.

It is ORDERED that:

1. From the date of this order until commencement of the trial or disposition of this case without trial, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making any extrajudicial statement which a reasonable person would expect to be disseminated by public communication, and that relates to:

> (a) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crimes), of the accused.
>
> (b) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(c) The existence or contents of any confession, admission, or statement given by the accused, or his refusal or failure to make any statement.

(d) The performance of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(e) The identity, testimony, or credibility of a prospective witness.

(f) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

The foregoing shall not be construed to preclude the lawyers or law firms, during this period, from announcing:

(a) The name, age, residence, occupation, and family status of the accused.

(b) A request for assistance in obtaining evidence.

(c) The fact, time, and place of arrest.

(d) The identity of investigating and arresting officers or agencies and the length of the investigation.

(e) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(f) The nature, substance, or text of the charge.

(g) Quotations from or references to public records of the court in the case.

(h) The scheduling or result of any step in the judicial proceedings.

(i) That the accused denies the charges made against him.

2. During the jury trial of this case, including the period of selection of the jury, a lawyer or law firm associated with

the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication that (a) relates to the trial, parties, or issues in the trial and (b) is reasonably likely to interfere with a fair trial, except that a lawyer or law firm may quote from or refer without comment to public records of the court in the case.

DONE this 17th day of April, 1985.

Emmett R. Cox
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR TH
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	CRIMINAL NO.
ALBERT TURNER, et al.	*	
	*	85-00014
Defendants.	*	

RESPONSE TO OBJECTION TO SEQUESTRATION AND REQUEST FOR PROTECTIVE ACTION

Comes now the United States and files this Response to the objections raised to the sequestration of the jury in this case. Sequestration is necessary and essential in this case if we are to insure that the verdict rendered will be based on the facts of the case as they develop at trial rather than perhaps being based on false and misleading information that may come to the jury from the news media. In support of the sequestration, the United States shows unto the Court as follows:

1. It is obvious that a concerted effort has been made by parties, counsel and those acting on their behalf, by legal pleadings and public statements, to create the impression that this investigation is unfounded or racially motivated. These

representations are false and can only be construed as a part of an effort to poison the jury pool and to attempt to cause witnesses to be reluctant to testify.

The facts are that in April of 1983 the Grand Jury of Perry County, Alabama issued an important report. The majority of that Grand Jury was Black and it had a Black foreperson. In it they reported that they had "extensively and exhaustively investigated the voting situation in Perry County." A copy of that report is attached to this motion. In that report they stated that they were convinced that a fair election "is being denied the citizens of Perry County, both Black and White." They went on to state "we encourage vigorous prosecutions of all violations of voting laws and especially would request the presence and assistance of an outside agency, preferrably federal, to monitor our elections and insure fairness and impartiality for all."

The existance of this report is well known to counsel for the defendants, but they have neglected to mention it in their speeches and attacks upon the government.

The election that the Perry County Grand Jury was investigating was the 1982 election. Because that Grand Jury had already conducted an investigation and returned no indictments and because it was expected that these problems would not continue after the actions of the Perry County Grand Jury, this office declined to conduct an investigation at that time. After that decision, no additional action was contemplated by the United States Attorney's Office relating to Perry County voting matters until late in the week prior to the 1984 primary election, which is the basis for this prosecution. Late in that week The United States Attorney's Office received a call from the District Attorney of Perry County who stated that two Black officials were with him and they were very concerned that a concerted effort was being made to deny a fair election. They asserted that a massive effort was being made to collect absentee ballots and that fraud was being committed in the process.

The only action that the United States took at that time was to observe the Marion County Post Office on the next Monday night, the Monday night before the Tuesday election. At that time the three defendants on separate occasions deposited into the mail box approximately 504 absentee ballots.

By Order of the Circuit Court of Perry County, those ballots were marked and every ballot, whether it had been mailed by the defendants are not, was examined to see if it had been altered in any way. Some 75 ballots were identified as having erasures or other alterations on them. All 75 of those voters were interviewed. Many of these voters will be witnesses in this case and are expected to testify that these ballots were changed without their permission and that they had given them to one of the defendants for mailing.

The United States Attorney's Office did not coordinate this investigation with the Department of Justice as part of a national program of prosecutions nor did it coordinate it with any other United States Attorney. The investigation came about solely because of the phone call by the Perry County District Attorney shortly before the election in 1984 relating to complaints that he had received and no such investigation had been planned prior to that time.

The votes that had been altered without the permission of the voters involved a change to a Black candidate supported by the Defendants from another Black candidate. The alleged fraud is, without contradiction, Black on Black.

2. With full knowledge of this situation, some counsel for the defendants have regularly made inflammatory statements in the newspapers charging racial bias and prejudice and making threats and demeaning statements about those who would testify on behalf of the government. Attached hereto are a number of news clippings, news releases and "fact sheets" which indicate the extensive publicity this case has generated and which also indicates the irresponsibility of the defense counsel and some of their supporters. Based on the statements contained in these articles, it is clear that we may expect that similar comments and misinformation will be given to the media during the trial which could affect the jury.

Below are listed some of the inflammatory quotes from the defendants or their supporters which are taken from the attached articles:

"The three Blacks were 'on political death row' as part of a widespread campaign to nullify voting rights and gains made in Selma 20 years ago," One speaker according to the newspaper "blasted anybody who may testify against the trio 'without cause'. Those Black folks who have decided to let themselves be used ought to be repudiated by everybody across the country."

Defense attorney Rose Sanders participated in the promotion of a "Unity Day" in Selma for the "Marion Three".

Albert Turner was quoted in the Montgomery Advertiser as saying "the whole thing was contrived from Washington, D.C. on down the local level," Turner said. "They want Blacks out and Whites back in." Defense attorney Hank Sanders was quoted as comparing the current investigation to an updated form of Reconstruction-Era intimidation.

Another article said "it's clearly a racist attempt to disenfranchise Black voters in the Black Belt." Defense Attorney Hank Sanders, also a State Senator, said that the investigation could keep Blacks from getting elected and went so far as to say that "Black office holders could become rare in the Black Belt." The investigation has been referred to as a "bogus investiation." Defense Attorney J. L. Chestnut told a crowd at a memorial service that "the evidence for these three

GRAND JURY REPORT

STATE OF ALABAMA)
)
COUNTY OF PERRY)

TO: THE HONORABLE EDGAR P. RUSSELL, JR., JUDGE OF THE CIRCUIT COURT
OF PERRY COUNTY, ALABAMA.

We the Grand Jury of Perry County, Alabama, in a period of two days have investigated 24 cases, returned 13 indictments, questiondd 30 witnesses, no billed 5 cases and continued 3 cases.

We hereby report that the Bond Inspection Committee has inspected the bonds of the Perry County Officials and have found them to be properly recorded in the Office of the Judge of Probate.

The Courthouse Inspection Committee has made a tour and inspection and find the following:

1) The entire building needs a new paint job throughout.
2) There is a need for new chairs, desk and carpet in the Tax Collector's Office.
3) There is a need for some plaster repair work to be done in the Tax Assessor's Office as well as the same repair work in the Mapping Room.

The Jail Inspection Committee has toured and inspected the Jail and does hereby report that the Jail is in better shape than it has been for a number of years. There are some repairs needed which are as follows:

1) There is need for plaster repair.
2) There should be replacement for all broken and missing window glass.
3) First floor shower and toilet is in need of repair and painting.
4) There is need for a light in the laundry room.
5) Broken urinals in the cells need to be replaced.
6) There is a need for lights in the west hallway.

This Grand Jury has extensively and exhaustively investigated the voting situation in Perry County. Our greatest concern is to assure a fair election for all parties and all people. At this point we are convinced that such an election is being denied the citizens of Perry County, both black and white. The primary problem appears to be with the tampering of the right to vote of the black citizens of this county. The problems are intimidation at the polls and abuse and interference with the absentee balloting process. These problem areas lie within gray and uncertain areas of the law and are generally confined to those segments of our society which are aged, infirmed, or disabled. We encourage vigorous prosecutions of all violations of the voting laws and especially would request the presence and assistance of an outside agency, preferably federal, to monitor our elections and to ensure fairness and impartiality for all.

At this time we see no reason to remain in session, therefore, we request that we be hereby adjourned.

Respectfully submitted on this the 20th day of Apnil, 1983.

JURY FOREMAN

SECRETARY Herbert L. Burdell

Filed in open Court
April 20, 1983
Mary Roberts, Clerk

APPENDIX D

CHARLES A. HOWARD AND ASSOCIA'
P. O. BOX 1971
MOBILE, ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ALABAMA
NORTHERN DIVISION

* * * * * * * * * * * * * * *

UNITED STATES OF AMERICA, *
vs. *
ALBERT TURNER, et al., *
Defendants. *

CRIMINAL NUMBER
85-00014

* * * * * * * * * * * * * * *

This cause coming on to be heard on defendant's motion to transfer case for trial before the Honorable Emmett R. Cox, United States District Judge for the Southern District of Alabama, Northern Division, on the 8th day of May, 1985, commencing at approximately 9:00 a.m.

PROCEEDINGS

THE CLERK: Case set for hearing on the defendant's motion to transfer case for trial, criminal 85-14, U.S. versus Albert Turner and others. What says the Government?

MR. ROLISON: The Government is ready.

MS. CAREY: Defendants are ready. It is my understanding that counsel for Spencer Hogue, that they are unable to appear today.

THE COURT: And the defendant, Evelyn Turner?

MS. CAREY: Ready.

THE COURT: Is Mr. Hogue here?

MR. TURNER: Mr. Hogue is here, Your Honor.

THE COURT: Mr. Hogue?

MR. HOGUE: Yes, sir.

THE COURT: It is my understanding that John Carroll is no longer acting as local counsel for you; is that correct?

(LONG PAUSE.)

THE COURT: Mr. Hogue, would you step up here a moment, please, sir? I have received information that John Carroll is no longer acting as local counsel for you; is that correct?

MR. HOGUE: Well, I haven't received a notice. That is why I couldn't respond.

THE COURT: Well, do you know why he is not here?

MR. HOGUE: I don't know why. He hasn't called me or nothing.

THE COURT: Well, have you seen John Carroll in connection with this case?

MR. HOGUE: Once.

THE COURT: Once?

MR. HOGUE: Yes, sir.

THE COURT: He never appeared in court in connection with this case, has he?

MR. HOGUE: No.

THE COURT: Well, you need to be in touch with him and either have an understanding that he is going to act as local counsel for you or you need to get other local counsel in this case.

MR. HOGUE: Yes, sir.

THE COURT: One reason we require local counsel is so we will always have somebody available.

MR. HOGUE: All right.

THE COURT: We are in a position here today where we have nobody available and I don't believe you have any local counsel. I haven't seen John Carroll in this case.

So, you either need to have an understanding that he is going to be your local counsel and be present or you need to get somebody else to serve as local counsel for you and if you can't afford to hire local counsel, you need to file a motion asking the court to appoint local counsel for you, because you have to have a local counsel in this case.

MR. HOGUE: Okay.

THE COURT: All right, sir. Let me make a couple of preliminary observations.

I am going to consider all materials on file in considering these motions. It is not necessary for anybody to present any testimony or evidence relative to matters that are already covered by affidavits on file.

It is my understanding, so that we don't have to hear a lot of evidence on this question, it is my understanding that all of the defendants reside within the Northern Division and that, at least, the great majority of the witnesses reside in the Northern

Division. Is there any question about that?

MR. ROLISON: No, sir.

MS. CAREY: No, Your Honor.

THE COURT: Mr. Rolison?

MR. ROLISON: No, sir.

THE COURT: So, I am not interested in hearing any testimony relative to that. That is agreed.

Okay. I will hear from the Government.

MR. ROLISON: Judge, we understood they had the burden in this case and you are taking everything -- do they have anything else they wish to offer?

THE COURT: Let me see if they want to present anything. Does the defendant, Evelyn Turner, want to present any testimony in the case?

MS. CAREY: Your Honor, we will not present live testimony, at this time. But I would like to file with the court two affidavits, one that is available right now and one that will be coming into the court shortly.

THE COURT: Have you furnished the Government a copy?

MS. CAREY: Yes, Your Honor.

THE COURT: Well, now, this affidavit has to do with the jury selection process; is that correct?

MS. CAREY: Yes. But it also addresses the issue of the disparity of black members of the jury of juries that are impaneled in Mobile rather than Selma.

THE COURT: Well, I don't understand that. They both come from the same jury wheel, counsel. What

MS. CAREY: I agree, Your Honor, although they are drawn from the same wheel, statistics that have been provided to us by the clerk of the court in Mobile suggests that blacks from the Northern District and other residents of the Northern District do not appear as regularly in the Southern District -- in the Southern Division as they do when the trial is held in Selma.

So, the affidavit and attachments are in support of that point.

THE COURT: But there is no suggestion that that is for any reason other than a random selection reason, is there?

MS. CAREY: No. There is no suggestion that it is in any way intentional, but to the extent that it has occurred over a period of time since 1980 that it is, in some ways, foreseeable.

THE COURT: Well, now, are we talking about jurors summoned or jurors who appear?

MS. CAREY: Jurors who actually appear.

THE COURT: Well, I will take a look at your affidavit, but I don't really propose to hear any today, any objections to the jury selection process, today. That is going to be heard at a later time.

MS. CAREY: Okay. We just wanted the issue considered of the difference, the impact that the difference in appearance that has been noted by the clerk may have on the number of blacks who are available to serve on the jury if it is in Selma rather than Mobile.

THE COURT: All right. Is there anything else you want to present on behalf of the defendant, Evelyn Turner?

MS. CAREY: We will be presenting an affidavit from the defendant, Evelyn Turner, as I said. It will be available to the Court shortly and I would also like to reserve the right, of course, to present an argument to the Court after the proof is before it.

THE COURT: All right.

MR. ROLISON: Judge, we would ask for a showing of what that affidavit is going to say so when we present our evidence we may address that issue and we ask whether or not that is going to be supplied to us since we have received very few documents. They have all been filed under seal.

MS. CAREY: Your Honor, once the affidavit is received here in court, a copy, of course, will be made available to counsel for the Government. I would like to introduce to the Court Attorney Victor McTear, who can explain, in detail, the contents of that document.

MR. McTEAR: With all due respect, Your Honor, I am a member of the bar of the State of Mississippi and the State of Maryland and the Federal bar of the United States.

The affidavit which we prepared on behalf of Mrs. Evelyn Turner directly addresses a number of issues, first of all, the inconvenience question and the difficulty that will be caused by transferring the trial from Selma to Mobile.

It states such obvious things as the additional amount of mileage if it is necessary for the trial to go to Mobile, noting, of course, the place of her location and residence as well as the presence and location of most of her witnesses.

It also explains directly that there will be a hardship caused to her and the witnesses who are all persons of limited means financially. As well as counsel that will not have access to legal consultation and secretarial skills available to them here in Selma.

The affidavit states the reasons she believes there is a clear-cut hardship and why that will affect her ability to present a defense and have a fair trial.

THE COURT: All right. Is there anything which the defendant, Albert Turner, wants to present?

MR. TURNER: Nothing, Your Honor. We reserve the right to argue after the Government finishes.

THE COURT: All right. Mr. Hogue, since you have no attorney here, I will ask you, is there anything you want to present on this motion?

MR. HOGUE: No, Your Honor.

THE COURT: All right. Mr. Rolison.

MR. ROLISON: Judge, we would call Marshal Mackey Garrett.

MACKEY GARRETT,

called as a witness at the instance of the Government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROLISON:

Q State your name.

A James Garrett.

Q Where are you employed?

A United States Marshal's Service.

Q What is your title with the marshal's service?

A Chief deputy United States Marshal of the Southern District of Alabama.

Q And that office is in Mobile?

A Mobile.

Q How many deputy marshals do you have?

A Seven, I believe.

Q Who is William L. Brookhart?

A Mr. Brookhart is the Circuit Court security coordinator for the Eleventh Circuit.

Q And he is with the marshal's service?

A He is an inspector with the marshal's service, yes.

Q Do you know what his duties are?

A He provides advice and setups on problem trials, security for trials, security for judges and things of this nature.

Q And has Mr. Brookhart been to Selma with you to inspect the facilities here?

A Yes. This past Friday.

Q And you conducted that survey with him?

A Yes.

Q Would you explain to the Court your procedure for rating trials as high risk trials or you have levels that you refer to trials as being at a certain level.

MR. McTEAR: May it please the Court, Your Honor, we object. This witness has not been qualified, himself, to talk about the matters which counsel presented. Counsel has very shrewdly pointed out the fact that there was another person present who was the specialist for the Eleventh Circuit.

There is no indication that this witness has those qualifications, at this time, and we object to his testimony.

THE COURT: He is the chief deputy marshal of the district. I will overrule the objection.

MR. ROLISON: Okay. Let me ask you this, do your duties include security for courtrooms?

A Yes, sir.

Q . How long have you been with the marshal's service?

A Seventeen years.

Q As deputy marshal, have you had any occasion to conduct a security or supervise the security of trials?

A Yes, I have.

Q All right. Tell me about what you found out when you made your survey as far as any problems with security for this particular facility here in Selma, Alabama.

A This building has no -- we have no court security officers based at this facility. We don't have an X-ray machine nor a walk-through magnotometer. The back door does not have what we call a crash bar. It has to stay unlocked and there is no way to lock the back door.

To move a jury in and out of the courthouse, you would have to bring them through the public. There is no jury room where you could get to it without having to bring them all through the public, through the halls and that sort of thing.

The jury room is up on the third floor. You would have to bring them in and up through the court through the hall to the courtroom.

The building is situated that if you had demonstrators or crowds of people you cannot get into the courthouse without coming through a bunch of people. There is no secure area that you can get into to get into this building.

MR. McTEAR: May it please the Court, there is a case which has come forth from the Eleventh Circuit, the United States versus Burns, which is rather clear on the subject of justification upon which there may be a motion to transfer. There is no mention of any standard, under Rule 18, that refers at all to security as a basis.

We, therefore, move to strike the following testimony just given as being irrelevant.

THE COURT: Well, I will deny your motion and you may have a continuing objection on the grounds of relevance.

MR. ROLISON: What kind of lockup system do you have here?

A We have a small holding cell which is actually two small cells with a false ceiling. It is not a secure area. We have to have someone there to watch it if they have anybody in the lockup at all times.

Q What about spectators, what did you determine as far as the spectators at a trial?

A This particular courtroom would handle approximately fifty spectators and, of course, with a small courtroom, if you have a large press, that tends to keep the public out, because the press would have to have space and would take away more from your local spectators.

Q All right. Let me ask you this, did you have a problem or do you have a problem when you keep spectators out of a trial that is a high publicity type of trial?

A That tends to create a problem, yes.

Q All right. What about the jury facility about where to house the jurors?

A There is only actually one motel in Selma that is large enough to house them and that would be the Holiday Inn and it is not suitable for housing a sequestered jury.

Q Why is that?

A Every room in the hotel opens to the outside. There is no amount of personnel you could keep people from being -- they could be photographed from the parking lot. They could be hollered at from the parking lot. It is nearly impossible to keep it secure.

Q Okay. Now, you have no marshals here stationed here in Selma, Alabama?

A No.

Q How many extra marshals or extra men would it take to secure this building and -- well, this building first?

A It would take, in my opinion, a total of about fifteen people, a minimum of security, and that is for the whole thing.

Q Would that include the jury too?

A Yes.

Q What about the feeding of the jurors, assuming that they were sequestered?

A This building has an extremely small jury room and it does not -- it would be difficult to feed in the jury room. We would almost be forced to take the jury out for lunch and there is only one restaurant close by that would be suitable, about four or five blocks that you would have to carry them through town to get to.

Q If you will compare this facility here in Selma to the facility in Mobile.

MR. McTEAR: Objection. This witness has not been established in any way, shape or form to having any knowledge of the facility in Mobile.

THE COURT: That is where he is from, counsel.

MR. McTEAR: Please forgive me, Your Honor. I am from Mississippi.

THE WITNESS: We have a secure parking area that we can bring the jury into the building without ever exposing them to the public. They come directly from the vehicles into the courtroom floor directly into the jury room and we clear the halls of all spectators, move them right down the hall into the jury room.

The jury rooms are large enough that we can cater the noon meal to them and we have a local hotel that we can house them in where all the rooms open inside to an inside hall. It is easy to keep secure, keep the public out.

MR. ROLISON: What type of lockup do you have there?

A We have two lockup facilities in Mobile each with two holding cells. They are secure facilities.

Q On your rating system -- I have asked you this before and Mr. McTear objected so many times about what level trial do you have a rating to rate this trial on a level?

A They rate them 1, 2, 3 and 4. This would be rated as a high risk trial because of the publicity that it would generate.

Q And you base part of that on the prior demonstrations that have been in front of the Federal Building?

A Yes.

MR. ROLISON: No further questions.

THE COURT: Counsel for the defendant, Evelyn Turner, do you have any questions?

MR. McTEAR: Yes, sir.

CROSS EXAMINATION

BY MR. McTEAR:

Q Mr. Garrett, my name is Vic McTear. If you don't understand me or would like for me to restate a question if you don't understand it, please do so.

When was the last time y'all had a trial here?

A In Selma?

Q Yes.

A Well, we started one yesterday. I am assuming you are speaking of a jury trial?

Q Yes.

A About two months ago, I think.

Q And this particular jury trial, what were the circumstances? Was it a felony case?

A Yes.

Q How many jury trials have you had in this particular courtroom in this particular courthouse say in the last year?

A Counsel, I wouldn't know.

Q More than five?

A I am guessing. I would say more than five.

Q So, these particular problems that you have prescribed pertaining to the nature of a high risk trial, this is not an uncommon problem. It has happened here before?

A Not one like this.

Q What do you mean not one like this?

A No with this type of publicity.

Q Not with this type publicity?

A No.

Q I see. You are indicating that there have been trials with publicity before, certainly.

A Yes.

Q There have been trials with substantial publicity, have there not?

A I would think so.

MR. TURNER: We are going to ask the Court to admonish counsel not to shake their heads when lookin at the witness.

THE COURT: Well, I am sure they didn't do that intentionally.

MR. TURNER: They have done it twice. The first time I thought it was nonintentional.

THE COURT: All right.

MR. McTEAR: I am interested in knowing when you say publicity not like this, are you referring to what, specifically? What made the publicity in this case?

A. Well, counsel, for instance, we have had one demonstration on this particular trial and, to my knowledge, we have never had that before.

Q. I see. So, there has not been a case, to the best of your knowledge, when there has been a concern that has been of great and consistent and ongoing concern to this community?

A. I don't know whether it has or not.

Q. So, what you are doing is you are making a judgment based upon a demonstration. You are saying that the publicity in this case was outstanding because of a demonstration and nothing more?

A. Well, I won't say nothing more, but that is one reason.

Q. Well, there is certainly, in this county, there have been cases which have been tried, such serious issues such as rape, murder, kidnapping, certain in your seventeen years as a marshal, wouldn't you agree?

A. I am sure there have. That would be across the street in the county courthouse.

Q I see. There have been, always been matters which have been brought in the Federal Courthouse which also have been of great community concern, have they not?

A Yes.

Q And those have been held in this building?

A Yes.

Q Despite all of this building's problems and the smallness of quarters or whatever else?

A That is true.

Q The fact that this area has a high risk rating, as you put it, does not mean a trial cannot be put here?

A I am not saying that it can't be put here, no.

Q It is just that you would have to hire additional personnel to be here?

A That is correct.

Q Now, despite the supposed demonstrations, has there been any indication to you, personally -- I am asking you personally of any activity of any nature, of any kind, which would directly affect the security of this trial?

A I am not sure if I know exactly what you are talking about when you say you personally.

Q I am asking you whether or not, of your own personal knowledge, you have been advised by any actions by any persons or any threats or any activities in any way, shape or form other than the demonstration which you have already described which, in any way, leads you to conclude that there is any threat to the security of this trial?

A Well, counsel, let me answer it in this fashion. One of the defendants in this case has been charged with tampering -- additionally charged with tampering with a witness.

Q Other than that, is there anything else?

A Well, other than stuff you hear on the street.

Q So, you don't know that as a fact?

A As a fact, no.

Q You say based upon this demonstration made by a number of persons and on a charge which has been made that one of these defendants allegedly tampered with a witness, this is the sole basis for your conclusion there is a danger of security to this trial?

A. I would think so.

Q. And you have indicated further that despite these problems.....

THE COURT: Let him finish his answer, counsel.

MR. McTEAR: Please forgive me, sir. Do you have anything further?

A. When you say sole basis, that leaves some other things that I can't prove. You know, but this is not my sole reason. There is other things that enter into it that I can't get up here on the witness stand and swear would happen.

Q. These are the things that you have indicated that were rumor?

A. Yes.

Q. That you have no basis to believe are true?

A. I have no basis to believe they are not true either.

Q. What are these items, sir, that you have shown in your own personal knowledge to be true and correct facts and not just rumors? What are the facts, sir? You have paused in responding to this question.

You have paused approximately fifteen seconds in responding to this question.

What are the specific facts which you indicate demonstrate to you that you have proven, in your own mind, other than the supposed problem with the charge against one of the defendants, other than the demonstrations, which lead you to believe that this trial could not be secure?

A. Counsel, there is nothing that I can prove. It is just rumors that I have heard, things that people, you know, have told me.

Q. You say that this building has no courtroom security, but you have already indicated that problems can be resolved, can it not, by bringing in fifteen marshals, correct?

A. It can be partially resolved.

Q. If you bring in fifteen marshals you could clear out the courtroom, allow the -- clear out the whole building downstairs and allow the jury to come in and then let the audience in afterwards, couldn't you?

A. That could be done.

Q. As far as concerning the absence of a magnotometer -- is that correct?

A. Yes.

Q. What is it called. I am sorry.

A. That is a magnotometer..

Q. Magnotometer. You can bring one in, can't you?

A. Certainly.

Q. You say there is not an adequate jury room for people to be served food; is that true?

A. Yes, sir.

Q. All right. Now, you correct me if I am wrong, over in Mississippi we bring in food and people sit down there and eat right there.

A. If there is enough space. That is a small jury room.

Q. Mr. Garrett, Officer Garrett, is it not a fact, true there has been trials in the past where jurors have been fed in the jury room?

A. Not to my knowledge.

Q. How were they fed in the past?

A. They were taken out.

Q. The answer to the question is you can take the juries out?

A We had to, yes..

Q As for this question of motel availability for a sequestered jury. Right now, isn't it a fact, true, there is no motion pending before this Court for this to be a sequestered jury?

THE COURT: No motion pending, but I have informed the marshal that this jury may be sequestered.

MR. McTEAR: I see. Would you not agree with me, sir, that appropriate measures can be taken in order to protect a jury even in a situation where their doors are on the outside as in a common motel such as Holiday Inn?

A There are measures we do take, counsel.

Q And, in fact, there is common practice when you have to, under certain circumstances, that you do house a jury wherever you have available accomodations?

A If we have to sequester one in Selma, we have no choice.

Q Have you sequestered one in Selma before?

A Yes.

Q You put them in where?

A We put them in another one worse.

Q Which one was that?

A The Selma Motel.

Q I stayed in the Selma Motel last night and that Selma Motel, all the doors are facing outside, if I recall correctly. It is a two-story building?

A Yes.

Q Somebody can stand down in the parking lot and scream up, hi, Joe, how is the jury going, and you wouldn't let that happen, would you?

A No, sir. That is why some of these gray hairs are here.

MR. McTEAR: Your Honor, for the defendant, Evelyn Turner, I have nothing further.

THE COURT: The defendant, Albert Turner.

CROSS EXAMINATION

BY MR. TURNER:

Q May it please the Court, Mr. Garrett, these rumors you have heard, you have checked them out by now, haven't you?

A I can't say as I have, Mr. Turner. There is no way I can check them out. All I can do is ask if anybody else has heard the same thing and some folks say they have and some say they haven't. There is no way I can run it down.

Q But you have taken steps to see if these rumors were true and one of the steps you have taken is to ask other people about if they have heard the same thing?

A Yes.

Q What are some of the rumors you are afraid of?

A I have heard that there would be demonstrators here each day of the trial.

Q Do you know who you heard that from?

A Right now I couldn't say. No, I don't.

Q Do you know who you asked about that?

A I asked the sheriff of Dallas County, that was one, if he thought there was anything to it. I asked the chief of police and I have asked several of the policemen. Names that I can't recall right now.

Q And they have indicated that that is one rumor you have heard and right now I don't know whether that is true or not. What other rumors have you heard?

A Well, one was that Reverend Jackson, Reverend Jessie Jackson, would be here to lead the demonstrators and I think I read that in the newspaper, but I am not sure.

Q And you have checked that out also?

A All I could do was ask if anybody else had heard that.

Q Now, is it also a fact that you have checked on the backgrounds of these defendants, particularly Albert Turner?

A That I have checked on the background of them?

Q Yes, sir.

A No, sir.

Q Do you know that they are out on bond?

A Yes.

Q Their own recognizance?

A I think so.

Q Even in this -- this witness tampering situation, are you aware there was no violence or threats of violence involved?

A All I know is the charge. I don't know what the circumstances are.

Q Now, are you saying that demonstrations has you leery about Selma and this courtroom and that is one of your statements?

A Yes, sir.

Q And that would not be a problem in Mobile?

A It would not present the problem in Mobile that it presents here; no, sir.

Q Why is that, because Mobile is too far for the demonstrators?

A No. In Mobile we have three courtrooms. This courtroom -- there is a sidewalk directly under this courtroom. If you have a large group of people out there demonstrating it would tend to taint the jury, so to speak.

Q That is an opinion of yours?

A Certainly.

Q And you don't know what would taint the jury?

A No. That is my opinion. In Mobile.....

Q What do you base that opinion on?

MR. ROLISON: Let him answer the question.

THE COURT: Let him answer the question, Mr. Turner.

MR. TURNER: Yes, sir.

A If the trial is in Mobile, if there were demonstrators and if they were on the sidewalk, the only courtroom that fronts on the sidewalk is just the one and we can move the trial from that courtroom to a courtroom that is completely isolated from the outside of the building. There is no outside interference.

Q That does what to the trial?

A It does nothing to the trial. All you do is whichever judge is trying it might make him go further down the hall to the other courtroom.

Q You say that activity would taint the jury?

A That is my opinion.

Q What do you base that opinion on?

A Well, I have nothing to base it on. That is my opinion, counsel.

Q You feel that would intimidate the jury some kind of way?

A It could very easily.

Q The absence of that would give the jury what, more nerves?

A No. I don't think it would give them more nerves.

Q You do feel extrinsic factors do influence the jury, is that what you are saying?

A It could easily.

Q Now, in Mobile, would you -- to move the jury from courtroom to the jury room, how would they leave?

Is there some way you can take them up?

A No. We would have to clear the hall.

Q You could not do the same thing here?

A We would have to, yes.

Q And in Mobile, you could seat more people, is that what you are saying?

A Yes.

Q And you would be interested in getting more people into the courtroom?

A If they want in.

Q So, despite the fact that you feel that people outside would taint the jury, you feel that people inside would not taint the jury?

A Well, I didn't say that. But if they are inside, once they get in the building they would be under control, more or less.

THE COURT: They don't demonstrate inside the building, is that what you are saying?

THE WITNESS: Yes, sir.

MR. TURNER: Now, Mr. Garrett, would it not be a true statement that -- is it true that this would be the first trial that you know of that has been moved from Selma to Mobile?

A. Counsel, I don't think it is the first one. I am not sure.

Q. Do you know of one?

A. Right off the top of my head I can't name one, but I am sure that they have been.

Q. Why are you sure of that, if you don't know of one?

A. I can remember one being moved, but I can't think of the trial.

THE COURT: They have been moved both ways, counsel. We have moved Mobile cases to Selma and Selma cases to Mobile.

MR. TURNER: All right. Thank you.

THE COURT: Mr. Rolison.

MR. ROLISON: None, Your Honor. Thank you, Mr. Garrett.

MR. McTEAR: With the Court's indulgence, my affidavit has just gotten here. Do you mind if we go over it with our witness just a second?

THE COURT: Not at all. Is there anything further anybody wants to present?

MR. McTEAR: If Your Honor please, we would like to make argument.

THE COURT: Before you argue the matter, I need to let you know what the calendar situation is. A jury term is tentatively scheduled in Selma for June 3rd. There is no jury term scheduled in Selma for June 17th and it would, in my judgment, be impractical and inadvisable to attempt to select a jury on the 3rd to commence trial on the 17th. So that possibility needs to be ruled out.

There is no jury term scheduled in Selma after June 3rd, at this time, until October 28th, with the possibility that Judge Hand may schedule a jury term here, however, when he comes here on September 23rd. But September 23rd would be the earliest jury term in Selma after June 3rd.

So, if this case is moved from Mobile to Selma, it would seem that the only possibility of gettin it tried anytime soon would mandate that we select the jury in Mobile on the 17th and then move the trial up here. That is the only possibility that I see that would accomodate both a transfer and any kind of speedy disposition of the case.

I don't know what counsel's position would be on trying it on June 3rd, except counsel for Mr.

Hogue has told me that that would be unacceptable to him. I beg your pardon, Mr. Stavis has told me that June 3rd would be unacceptable to him to commence the trial. I don't know what counsel's position otherwise would be.

All right. I will hear from you.

MR. McTEAR: Your Honor, I am also with Mr. Stavis, although based in Greenville, Mississippi, and I will speak for him today.

We would need approximately two minutes to confer if Your Honor would allow it.

THE COURT: All right. Well, let's take about a five-minute recess.

(RECESS.)

THE COURT: All right. I will hear from you.

MS. CAREY: Your Honor, the motion that is presently before the Court involves issues that have been specifically and clearly addressed by the Eleventh Circuit in the case named United States versus Burns.

In this 1981 decision, the Eleventh Circuit clearly said that the fixing of a place for trial, even though it is within the sound discretion of the District Court Judge, must be exercised to give due regard to the criteria that is outlined in Rule 18 of the Federal Rules of Civil Procedure.

Namely, the convenience of the witnesses and defendants and the prompt administration of justice.

The conviction in Burns was reversed by the Eleventh Circuit with the court noting, in support of its reasoning, that the distance between where the alleged crime was said to have occurred and the Birmingham courtroom was over one hundred miles. The court also noted that of the twenty-four witnesses that the defendant intended to call to trial, twenty-two were located in the division, not in the Northern Division which was near Huntsville instead of the Birmingham court.

Thirdly, the court pointed out that the third criteria of prompt administration of justice related specifically to the issue of speedy trial and did not find the issues that had been raised before the District Court Judge or the judge's ruling on those issues persuasive.

In the present case, the factors that go to those three criteria are even more compelling. In this case, there is much more of a change of undue hardship, expense and inconvenience that could result in an unfair trial to the defendant in this case.

Looking at the first of the tests, the convenience of the defendants. As the Court has noted before, all defendants live within the Northern Division of this district. The defendants, therefore, if the trial were set in Selma could live at home for no charge. They could receive many of their meals at home with no charge and there are very limited transportation expenses.

Looking at the second prong of the test, the witnesses that will be called for trial of this matter are numerous. We estimate between twenty to forty witnesses, that wide of a spread of witnesses who will be called to trial on behalf of the defendant. Many of these witnesses are elderly. They all live in Perry County or, if not, in Perry County within the Northern Division of this district.

If the trial is held in Selma, they would be allowed to stay at home at night. They would be allowed to receive many of their meals at home. There would be very little or, in comparision, an insignificant loss of employment or other means of financial sustenance to the witnesses during the time that they would have to be available for trial.

Defense counsel, if this trial is to be set in Mobile, will be required to spend considerably more time assuring that the witnesses would appear and be available for trial. Again, there are special concerns of elderly witnesses that the Court can take into consideration and we would ask the Court to take into consideration of them being away from home for a period of maybe up to two or three days, the more extended transportation that most of them would have to undergo to be present there.

Thirdly, there is a hardship to both the defendants, personally, and to their counsel and there being an absence of adequate support staff available in the Mobile area. This will affect the ability of counsel for all of the defendants to prepare their case to be able to have secretarial staff, to prepare and type briefs, memorandum and other documents that must be submitted to the Court.

There are no offices readily available in Mobile for defense counsel to use for consultation with the numerous witnesses that we will be calling and there are no resources for legal research available, after hours, to defense counsel that we know of.

In contrast, in Selma, all of these support services are available to counsel in a very familiar setting. As you are well aware, counsel for defendant, codefendant, Albert Turner, has law offices here in Selma and they have indicated that they will be made readily available to all of defense counsel.

The Court then must consider the third factor, which again deals with the prompt administration of justice. In this case, all defendants have already waived, on the record, their right to a speedy trial under the speedy trial act. In addition, all defendants are ready and available to proceed to trial on June 17th.

So that we believe that the third prong of the test is essentially irrelevant, at this point, to the Court's decision and that giving the other considerations, that all of the factors of the Rule 18 test weigh very heavily in favor of having the trial set here in Selma.

I would like to call the Court's attention, if you have had the opportunity to review the affidavit that was submitted in support of defendant, Evelyn Turner's motion for transfer, and, in that affidavit, Attorney Raphael Angalotta Lopez, who has been assiting defense counsel outlined in detail the cost and expenses that were estimated to be incurred if we were to have to try this case in Mobile.

Those expenses total in the neighborhood of twenty-eight thousand dollars. Taking the same look at the expenses that would be incurred here in Selma, we could come up with an estimate that is closer to five thousand dollars. That is a significant difference in expense along with the inconvenience and burden that, quite frankly, the defendant is unable to bear, at this point.

The Turner Court -- excuse me, the Burns Court also made clear that the judge's determination, the discretion that is to be exercised in determining where the trial would be held, should be exercised within the discretion that is given by the rule.

There are cases, in particular Dupont versus United States, 388 F 2nd, 29 and U.S. versus Fernandez, 480 F 2nd, 726 that specifically say that the convenience of the prosecution is not to be a factor to be considered in the balance. The security concerns that have been raised by the Government in this case can, as we have noticed from -- as we have observed from the testimony provided today, remedied in most ways through the normal procedures of the U.S. Marshal. It is the responsibility of the United States Government in this case and, concerning this courthouse, to provide the order that is necessary for a fair trial of this case.

We have heard nothing here today to suggest that they cannot provide such order.

In addition, it is clear that the defendant's right to have a trial set in the vicinity of the residence where the crimes occurred or alleged to have occurred where all the witnesses are readily available cannot in any way be prejudice by the inability or the failure -- not the inability. More so the failure of the United States Government to protect and provide order in a Federal Courthouse.

Thank you.

MR. TURNER: Your Honor, I will be very short. I think Attorney Carey covered every point in detail.

I would like to say that, for the Court's own record, with this case to be transferred, our firm would be willing to take care of all of these small defense matters for the defense lawyers, whereas, if we were required to go further, that would be hard to do.

We all have homes in this area, which -- this is meat and potatoes I am talking about, not case law. We have homes where we can house people, special cocounsel and these things I feel like the Court is aware of. The Court regularly sits here, as he knows, between Mobile and Selma.

The Court also hears that the Government is going to be trying the case for three weeks. I think it is obvious what our problems are.

We are here, Your Honor, asking this Court to transfer this case to Selma for those reasons. We appeared in Mobile and, at that time, we were given the trial date of June 17th. We are not here to ask that this trial be put off beyond June 17th. If it means going to Mobile and strike the jury and come back here, we will do that.

Our purpose it to try this case for the convenience of this case, but they should not be persecuted. When you look at these figures and what these people have to go to, that is going to amount to a persecution, not a prosecution.

As far as the speedy trial issues are concerned, we will be ready to go on the 17th and we will do whatever is necessary to go on the 17th. I thought we ruled the 3rd out when we were down there and then, if we have to do something to accomodate this Court beyond the 17th, we will do that, if it means signing another waiver, but we are not here saying to continue the case.

We feel like to offer these people to be able to present their defenses, that it is a tremendous burden on them to get the kind of resources to try this case in Mobile, Alabama.

THE COURT: All right. Mr. Rolison.

MR. ROLISON: Your Honor, we realize that it is an inconvenience on everybody to try any case anywhere. The problem in this case, as was stated by the marshal, is the problem with security, the problem with seeing that fair and impartial jury is impaneled, seeing that no undue influence is placed on them by any demonstrations, mobs or whatever and that they, the witnesses, are brought in and out of the courtroom in an orderly fashion.

The last time this case was set, there was planned -- and I am referring to the newspaper accounts, there was planned by the Reverend Jessie Jackson a caravan through this part of the state and there was to be stops at every courthouse and they were to make speeches and it was for the defense of the three defendants.

Now, that did not come about, but the Government has no reason to believe that that won't happen the next time this case is set in Selma. This case, this building, this physical facility here is just not situated in a way that it would not be very easy to set up demonstrations.

This courtroom is a small courtroom. There is going to be a lot of people wanting to see this case and the marshals are going to have to set up a security around this building and when some of them are not allowed to come in and see this trial that is going on, they are going to be disturbances or there will be a possibility of disturbances.

This building is just not equipped to handle this type of case that has had this much publicity and has had this much impact in this community and that Rule 18 says the prompt administration of justice.

Now, it is -- it wouldn't be the prompt administration of justice to bring the extra marshals in here. The problem with feeding and getting these jurors back and forth through this area here and it is just not the place to hold this trial.

Now, the Burns' case, as I understood it, it was the policy that all criminal cases were set in Birmingham. That is not the case in this district. We do set cases here for trial. We do have cases here. Cases have been transferred back and forth.

It is going to be an inconvenience on the Government to get the Government's witnesses to Mobile, Alabama. They are elderly, but the Government realizes that one defendant in this case has already been the subject of another criminal charge in the fact that someone tried to get this witness to change their testimony.

That person, the Grand Jury believed that person to be Spencer Hogue, Jr. They stated there wasn' any violence involved. We are not saying there is going to be any violence involved, but the pressure of trying this case here, it has a greater possibility of influencing the jury one way or the other, for or against, and what the Government would want is a fair and impartial jury to decide this case once and for all and that can be best accomplished in Mobile, Alabama, than it can here in Selma in this courthouse.

THE COURT: How many witnesses is the Government going to call?

MR. ROLISON: Judge, we are probably going to call somewhere between twenty and forty witnesses like they said. We know there are twenty-nine counts and I would say probably forty, nearly forty.

THE COURT: Do you suppose, altogether, there will be over a hundred witnesses from the Northern Division called in this case?

MR. ROLISON: I doubt it.

THE COURT: You doubt it?

MR. ROLISON: I doubt there will be a hundred witnesses. Probably being nearer two fifty witnesses.

THE COURT: You mean Government and defense?

MR. McTEAR: No.

MR. TURNER: We couldn't agree to that.

MR. ROLISON: I don't have any idea about them.

THE COURT: You are talking about Government witnesses when you are talking about fifty?

MR. ROLISON: No, less than fifty.

MR. McTEAR: Let me assure you, if they are going to present approximately forty witnesses, we can assure you it is very likely we will present sixty witnesses or more. I will also assure counsel there are untold things that happen and not expected in every case. We could go well over a hundred witnesses.

THE COURT: Well, he said he doesn't know how many you are going to call.

MR. ROLISON: I don't believe he will call sixty witnesses, I will tell you that.

THE COURT: I think this issue ought to be decided promptly and I am going to decide it, at this time.

In view of the fact that there are a number of witnesses from the Northern Division who will be called by one party or another, that circumstance is one which indicates the case ought to be tried in the Northern Division. The fact that the parties reside in the Northern Division indicate that the case ought to be tried in the Northern Division.

The prompt administration of justice dictates that at least, for this trial setting, that is June 17th, that the jury be selected in Mobile.

So, the Court is going to order, in this case, that we will select the jury for the trial of this case in Mobile, Alabama, on the 17th day of June. After the jury is selected we will move the trial to Selma.

Now, the Court is concerned about the problems instant to trying this case in this courthouse. If, after we commence the trial of this case, there are organized efforts -- and I am not suggesting that the defendants would organize them at all. Don't misunderstand me. If there are organized efforts to intimidate this jury or to intimidate witnesses in this case, the Court will, at that time, entertain a motion to pack up and move the trial back to Mobile, Alabama, if that happens.

I want to remind all counsel in this case, the Government and the defense counsel, that you are all officers of the court and that we are going to have problems trying this case here and there are members of the public who are going to want to attend this trial who are not going to be able to attend and I am going to ask all of you to help the Court with that kind of problem. It will arise.

Some people who are turned away need to be told why they are turned away. They need to understand that we only have limited seating facilities here in this courtroom. There are many ways in which counsel can help the Court in seeing that this trial is conducted in a way in which it ought to be conducted and I am calling upon all of you to do that in this case.

Now, this transfer is for this trial setting only. If this case doesn't go to trial on the 17th for whatever reason, don't misunderstand me, as I right now, I fully intend for it to go to trial on the 17th, but if it doesn't, then whether or not it will be tried in Selma on some other trial setting will be a question that the Court will have to address, at that time, given the calendar problems it has.

Is there anything else we need to do, at this time, in this case?

MR. McTEAR: May it please the Court, there were other motions that need to be dealt with. Your

Honor will recall that there was a motion recently filed by the legal defense fund in this case in which the defendant, Spencer Hogue, filed on his behalf. We joined in that motion as the representatives for Evelyn Turner. The Court, however, ruled and submitted to us an order on Monday that we would not be allowed to join in that most large and difficult motion pertaining to the issue of the selective prosecution in this particular instance.

We would like the Court to reconsider its previous action and allow the defendant, Mrs. Turner, to join in the motion which is heretofore presented by Mr. Spencer Hogue. We make that request because we believe that the facts that have been set forth in the first motion are identical to the facts as we have set forth in a similar motion.

We feel there was no reason to duplicate or to engage in a duplicative effort through the Court.

THE COURT: I thought you had a motion to dismiss pending?

MS. BEDWELL: Your Honor, if I may, the Court has filed an order dated April 30th which does state that all three defendants have identical motions and they are all dated February 15th and that is the motion to dismiss for selective and improper prosecution. I think the record indicates that there was or there is such a motion on file for all defendants.

THE COURT: Counsel, there was a motion to dismiss for selective discriminatory and bad faith prosecution on behalf of all three defendants on February 14, 1985.

MS. CAREY: Right. And then, subsequently, on April 15th there was a motion filed to dismiss the indictment as the product of an invidiously and vindictive prosecution as a product of the Government with the Grand Jury.

We, at that time, motioned to join with the defendants -- with defense counsel in submitting that to the Court and, as of last week, your order, as we read it, denied us that opportunity.

THE COURT: Well, what I denied, I think, was a motion to adopt motions.

MS. CAREY: Correct.

THE COURT: I do that for two reasons. Number one, it is an administrative monster to go from file to file to file to see which motions have been adopted by which defendants.

Secondly, I don't think it is consistent with the notion that an attorney who has an obligation by his signature to suggest good faith, no friviolity, either with the filing of the motion or as to signing the motion. For both of those reasons, I think everybody ought to file their own motions.

Now, if you want to file a motion out of turn, I think that you need to file a motion to file a motion out of turn. That is your next step.

MS. CAREY: Okay. So the Court will allow us the opportunity to so file.

THE COURT: You can file, but I am not going to tell you what my ruling will be.

MS. CAREY: Your Honor, there is another matter. There was another order issued by the Court that we received last week asking us to submit -- all defendants to submit additional affidavits in support of those motions that deal with selective prosecution. The order was signed on April 30th and the order gave us fifteen days from the date that it was issued to provide those affidavits.

We did not receive that order until the 6th, this Monday.

So, I would request of the Court fifteen days from the date of receipt of that order for the filing of said affidavits.

THE COURT: Well, I am going to ask that you take that up with Magistrate Sims. All of those motions have been referred to him for hearing and whatever is agreeable with him is just fine with me. He is going to hear all of them.

So, if it is agreeable with him, you need not consult me about it, just take that up with him, if you will. My only concern is that the matter be disposed of in time to permit trial of the case, assuming the possibility, at least, that the motions will be denied.

They need to be disposed of in time for us to proceed with the trial. He understands that. So, you can take that up with him.

MR. McTEAR: Thank you very much, sir.

THE COURT: Court is adjourned.

(COURT ADJOURNED.)

CERTIFICATE

STATE OF ALABAMA)
COUNTY OF MOBILE)

I do hereby certify that the above and foregoing transcript of proceedings in the matter aforementioned was taken down by me in machine shorthand and transcribed under my personal supervision, and that the foregoing represents a true and correct transcript of the proceeding had upon said hearing.

Charles A. Howard
CHARLES A. HOWARD
COURT REPORTER

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ALBERT TURNER, SPENCER HOGUE, JR. AND EVELYN TURNER
Defendants.

Criminal No. 85-00014

SUPPLEMENTAL MOTION TO RESET TRIAL DATE AFTER JULY 1, 1985 AND SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THE INDICTMENT ON SELECTIVE/ VINDICTIVE PROSECUTION GROUNDS

Defendant Spencer Hogue, Jr., respectfully seeks a post-July 1, 1985, resetting of the trial date and discovery and a hearing on selective prosecution on the following bases:

1. On May 23, 1985, the Magistrate entered two Orders requiring, respectively, that the Government provide fourteen (14) of the "particulars" requested in Evelyn Turner's Motion for Bill of Particulars and four (4) particulars requested in Albert Turner's Motion of the same title, and that said particulars "should be filed and served no later than May 31, 1985."

2. On May 24, 1985, the Magistrate ordered the Government to answer six (6) questions in the nature of a bill of particulars and to file and serve those answers "[n]o later than May 31, 1985."

3. The Government did not serve copies of items 1 and 2 above, as required by Order of the Court, on May 31, 1985. Rather, the Government served documents entitled "Response to Evelyn Turner's [and Albert Turner's] Bill of Particulars" on June 3, 1985 (item 1 above), which counsel received on June 4, 1985. So far, counsel for Mr. Hogue have received no answer by the Government to the six questions posed by the Magistrate in his May 24, 1985, Order. Moreover, the "particulars" which have been served do not in even the remotest way speak to some of the questions posed by the Magistrate--*e.g.*, Questions 3, 5, 6. Both of Mr. Hogue's counsel will be out of town the next two days (in connection with this matter, in Mr. Liebman's case), so that it is a virtual certainty that any filing by the Government in response to the May 24, 1985, Order will not reach us before Friday at the earliest.

4. Mr. Rolison has not answered my phone calls this day, June 4, 1985, so I have been unable to determine whether he has responded or intends to respond to the May 24, 1985, Order.

5. The Government has absolutely failed and refused to provide the following "particulars" that the May 23, 1985, Order required it to provide in answer to Evelyn Turner's Motion for a Bill of Particulars:

a. Items 2(j) and 19 ask for certain "particular definitions" of terms as used in the indictment. The answers give dictionary definitions, never referring to how a dictionary definition of "false" has any bearing on what the indictment means by a "false ballot." These answers are wholly uninformative.

b. Item 2(k) asks "in regard to the term 'fraudulently8 altered' [in the indictment], whether each of the alleged changes was made in or out of the presence of the voter." The Government refuses to say. (On the telephone yesterday, however, Mr. Rolison said that as to a number of ballots, the so-called "alteration" means nothing more than that one of the defendants filled out the candidate-selection portion of the ballot in the presence of the voter after the voter made his/her "X" on the signature line and gave the ballot to a defendant.)

c. Item 7(b) requires the Government to state "which absentee voters, by name and race, were 'aided, counseled and encouraged' by defendants" to file false absentee eligibility statements. Although the Government admits that it fully intends to offer "proof in this regard ... that the defendants were soliciting absentee votes without regard to whether the voter was eligible," it does not specify the name, much less race, of any such voter.

d. Item 24(c) (erroneously labeled 22(c) in Government's response) asks for "the manner in which each defendant voted more than once." The Government's answer--that "the defendants exercised their will over someone else's ballot"--is also wholly uninformative. The Government never states, for example, whether some form of "undue influence" or "pressure" constitutes "exercising their will over someone else's ballot." (By telephone yesterday, Mr. Rolison said that assertedly taking advantage of a voter by getting the voter to make an "X" on the signature line, while leaving a defendant to fill out the ballot constitutes "exercising [defendants'] will over someone else's ballot"--*i.e.*, in a situation where there is every indication of consent or acquiescence and where any wrongdoing would have to be on some kind of improper influence theory.)

e. In order that defendants could know *which* ballots supposedly evidence a defendant's multiple voting, but could do so without making the voter's name public, defendants asked (and the

Court ordered) Mr. Rolison to specify the identifying number of "each" such ballot. See item 24(d). The Government refuses to specify the ballots, however, giving only their total quantity. (On the telephone yesterday, Mr. Rolison refused to give me the names of those voters when I asked directly. He did tell me, however, that those voters are different from the ones specified in the indictment.) Accordingly, it is clear that Mr. Rolison intends to rely on ballots voted by 35 voters (see his answer to item 22(a), i.e., 24(a)) whose names defendants have never been provided. We cannot prepare to try this case under those circumstances.

f. The answers to items 24(e) and 24(h) are entirely unintelligible given the absence of any answer to item 24(d). (Moreover, on the telephone yesterday, Mr. Rolison informed me that "altered" for purposes of multiple voting meant something quite different from the use of that term in paragraph 4(i) of count two--i.e., in his view a wholly unchanged or unaltered ballot still counts towards voting more than once if a defendant filled it out after the voter willingly put his or her "X" on the signature line and handed the ballot back to a defendant. Because we do not have the names of the voters or their ballot numbers and because these ballots reflect no visible change on them, we cannot figure out what ballots are involved.)

6. The Government has absolutely failed and refused to provide the following "particulars" the May 23, 1985, Order required it to provide in answer to Albert Turner's Motion:

a. The Government refused to answer item 13.

b. Items 30 and 31 ask for "name[s] and address[es]" of voters who executed false oaths or were aided in such by defendants. The Government intends, it admits, to adduce "evidence in this regard" but refuses to respond to the Order by providing names and addresses.

7. Without the answers to the particulars, Mr. Hogue and his attorneys cannot prepare for trial effectively. The Government's refusal to respond to the Court's orders in a timely fashion renders it impossible for the defense to be ready for trial less than two weeks from now. To give one of many possible examples, the Government admittedly plans to rely on the testimony of 35 persons whose ballots (unknown to defendants) allegedly evidence multiple voting by defendants. Despite a request for an identification of those voters--which request this Court ordered the Government to answer by May 30--defendants still have no such identification. Whenever it does

come in the future it will simply be too late to permit the 35 persons to be interviewed before trial.

8. On May 17, 1985, James S. Liebman requested that the Government make the ballot materials available in Mobile during the week of May 21, 1985, when counsel were in Mobile pursuant to Court order. The Government refused, Mr. Rolison informing James S. Liebman, Esq., that moving the ballots to Mobile would cause "chain of custody" problems. On June 4, 1985, Mr. Liebman called Selma FBI Agent R. Garry Clem, who has custody of the ballots, to say that he (Mr. Liebman) would be in Selma during the remainder of the week (Wednesday - Friday) in order to view the ballots. Mr. Clem informed Mr. Liebman that the ballots are not in Selma, but have been moved to Mobile. Thus, when we asked to see them in Mobile, in conjunction with our court appearances there, we were refused access based on Mr. Rolison's argument that the ballots could not leave Selma. Now that counsel can travel to Selma, we are informed that the ballots, indeed, can be and have been moved to Mobile for use by Mr. Rolison. There are over 2,000-separate ballot documents. With the Government making access to those ballots so difficult, we cannot be prepared for trial on June 17.

9. What incomplete answers to the May 23 and 24 "particulars" Orders the Government has provided, clearly establish a right to discovery and a hearing on selective/vindictive prosecution:

a. The Magistrate concluded that defendants are "entitled to go forward on the selective prosecution defense" if the Government's bills "establish that ... inducement to false swearing regarding eligibility [to vote is an] independent basis of guilt." Recommendation at 7-8. The Government now admits that it intends to premise the defendant's criminal liability on the conspiracy and other counts on "proof ... that the defendants were soliciting absentee votes without regard to whether the voter was eligible." (Government's Response to Evelyn Turner's Bill of Particulars, at item 7.b). A hearing must be held.

b. Although fatally ambiguous, given the Government's failure to answer Question 3 in the Magistrate's May 24 Order, the Government's answers to item 14 in Albert Turner's Particulars Motion and items 10.a. and b. in Evelyn Turner's Particulars Motion seem to indicate that "improper notarization" is indeed an "independent basis of guilt" (Recommendation at 8) under the Government's theory with regard to Ms. Turner. Numerous ballots whose voters' names are listed in the attachments to the Government's responses have absolutely no alterations on them. Under these circumstances, the Magistrate's Recommendation (p. 8) provides that "evidentiary proceedings and related discovery should be scheduled."

c. The Magistrate defines "altered ballots" as being only those ballots as to which the candidate selections marked on the vote ballot were "not authorized in any fashion by the voter" and as to which "there was no form of acquiescence or consent" by the voter. (Recommendation at 5-6.) The Magistrate goes on to recommend that a selective prosecution hearing be held if the "bills establish that unconsented ballot alteration of candiates is [not] the sine qua non of each count[]." (P. 8.) Item 22.c. (sic--should be item 24.c.) of the Government's Response to Evelyn Turner's Bill of Particulars Motion clearly states that, whether or not a ballot was in fact altered or changed from one candidate to another, and whether or not the voter acquiesced in the voting of his/her ballot by a defendant (as, for example, by putting his/her "X" on the signature line and handing the ballot over to a defendant who filled out the ballot), multiple voting is made out if the defendants "exercised their will over someone else's ballot" by "mark[ing] the defendant's choice of candidates there." Moreover, Mr. Rolison explicitly informed undersigned counsel by telephone that he fully intends to rely at trial on testimony falling within the "no alteration"-"voter acquiescence" example given just above. Unconsented alteration is clearly not the sine qua non of counts twenty-eight and twenty-nine,[*/] therefore, and a hearing must be held.

Wherefore, the trial date should be reset after July 1, 1985, and a hearing on selective/vindictive prosecution scheduled.

[*/] Indeed, by telephone, Mr. Rolison stated that "at least one" of counts two through twenty-seven also involves the "no alteration"-"voter acquiescence" situation above.

Respectfully submitted,

JULIUS L. CHAMBERS
C. LANI GUINIER
JAMES S. LIEBMAN
16th Floor
99 Hudson Street
New York, New York 10013
(212) 219-1900

BY: ______________________
JAMES S. LIEBMAN

ATTORNEYS FOR DEFENDANT
SPENCER HOGUE, JR.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, James S. Liebman, being duly sworn, depose and say that the foregoing facts are true to the best of my knowledge and belief.

Dated: 2:30 p.m., June 4, 1985.

____
JAMES S. LIEBMAN

Sworn to before me this
4th day of June, 1985.

____
Notary Public

CERTIFICATE OF SERVICE

I, James S. Liebman, hereby certify that copies of the foregoing Supplemental Motion to Reset Trial Date After July 1, 1985, and Second Supplemental Memorandum in Support of Motion to Dismiss the Indictment on Selective/Vindictive Prosecution Grounds were served by United States mail, first class postage prepaid, addressed to the following:

Hon. E. T. Rolison
Assistant United States Attorney
Federal Building
Mobile, Alabama 36652

Dated the 4th day of June, 1985.

James S. Lie
JAMES S. LIEBMAN

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
)
vs.) CRIMINAL CASE NO. 85-00014
)
ALBERT TURNER, SPENCER HOGUE)
JR. AND EVELYN TURNER.)

ORDER

This matter is before the court on the Government's motion filed and served on May 31, 1985, seeking a reconsideration of orders entered by the Magistrate on May 23, 1985. The motion to reconsider is GRANTED. Upon reconsideration, it is

1. ORDERED, that nothing in the Magistrate's order dated May 23, 1985, shall be construed as requiring the Government to surrender possession of absentee ballots, affidavits or envelopes to examiners of question documents or the affected voters. While copies may be exhibited (provided that the affected voters shall be shown only those ballot materials purportedly filed under their names), should the defendants want the original of any of the aforesaid documents exhibited they shall arrange for that to be done without the necessity of the Government surrendering possession of the same.

2. FURTHER ORDERED, that the Government shall respond to defendant Albert Turner's bill of particulars number 13.

DONE this 7 day of June, 1985.

UNITED STATES DISTRICT JUDGE

JUN 7 REC'D

302 (REV. 3-8-77.

APPENDIX G

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/3/84

30. ALMA GLADYS PRICE, 210 Lincoln Street, Marion, Alabama, was advised of the identity of the interviewing agent and that she was being interviewed regarding an election law violation; mail fraud violation.

PRICE advised that she voted absentee ballot during the election held in Perry County, Alabama, on September 4, 1984.

PRICE advised that she is a retired teacher and not physically able to go to the voting polls.

PRICE advised that she received her absentee ballot by mail with no one specifically soliciting her to vote absentee ballot.

PRICE was exhibited an affidavit of absentee voter with the name, ALMA G. PRICE, stating that she does not recall an ALBERT TURNER or an EVELYN H. TURNER signing this document in her presence. PRICE advised that she knows an ALBERT TURNER but does not know an EVELYN H. TURNER.

PRICE was exhibited an official absentee primary election ballot taken from the affidavit of absentee voter envelope, stating that someone at her residence, name not recalled, read out the names of the candidates to her, with her asking this individual to mark the ballot according to the individuals that she desired to be voted for. PRICE stated that she recalls specifically voting for a REESE E. BILLINGSLEA but doesn't recall the names of the other individuals that she desired to be voted for. PRICE advised that she authorized no changes on the ballot and made no changes on the ballot, specifically not marking out the names of any candidates on the ballot.

PRICE advised that the absentee ballot was taken personally after being sealed and placed in the envelope by the unknown individual that was at her residence to be returned for her.

PRICE is described as a black female, Telephone No. 683-6361, who has difficulty walking.

Investigation on 9/25/84 at Marion, Alabama File # Mobile 56C-215

By SA JAMES F. BODMAN, JR. JFB/slm Date dictated 9/28/84

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FD-302 (REV. 3-8-77)

APPENDIX H

FEDERAL BUREAU OF INVESTIGATION

- 1 -

Date of transcription 10/9/84

ALMA G. PRICE, 210 Lincoln Street, Marion, Alabama, black female, date of birth January 28, 1900, was advised of the identity of the interviewing agent and the purpose of the interview. PRICE was interviewed in the presence and with assistance of LAVONNE PHILLIPS, Investigator for the District Attorney's Office, Marion, Alabama.

Mrs. PRICE advised her absentee ballot was brought to her by ALBERT TURNER, and that he was present when she voted, and in fact actually voted for her. Mrs. PRICE explained that due to her age she cannot read that well. TURNER read the ballot to her, and since she did not know who the candidates were, permitted him to vote her ballot for her. Mrs. PRICE advised that she did know REESE BILLINGSLEA as one of the candidates, and first voted for him, and as best she can recall, asked TURNER to strike his name out, that is not vote for him, but vote for his opponent. Mrs. PRICE advised that she never looked at the ballot to verify that TURNER marked it as she instructed, but trusted him to do as she requested.

Mrs. PRICE advised that several days prior, she was contacted again by TURNER, who asked if she had been contacted by the FBI. After she answered in the affirmative, he told her that she did not have to go to court, she could tell the FBI that she was physically unable to go to court, and that she could furnish a statement to this effect.

26½ pieces

Investigation on 10/5/84 at Marion, Alabama File # Mobile 56C-215-53

by SA R. GARRY CLEM RGC/mel Date dictated 10/5/84

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APPENDIX I

FEDERAL BUREAU OF INVESTIGATION

1 Date of transcription 12/17/84

30. ALMA G. PRICE, 210 Lincoln Street, Marion, Alabama 36756, was contacted at her residence, and after being apprised of the identity of the interviewing Agent and the nature of the inquiry, provided the following information:

PRICE was read an FD-302 reflecting an interview with herself and SA JAMES F. BODMAN, JR. conducted on 9/25/84. PRICE stated since the interview with SA BODMAN, she believes ALBERT TURNER and EVELYN H. TURNER signed the Affidavit in her presence, although at the time of the interview, she stated she did not recall their doing so. PRICE stated she recalls specifically voting for a REECE E. BILLINGSLY and one other individual whom she could not recall. With these alterations in the FD-302, PRICE was placed under oath, and swore the report to be truthful, accurate, and complete.

26½ pesas

SEARCHED ____ INDEXED ____
SERIALIZED CA FILED ____
DEC 17 1984
FBI-MOBILE

Investigation on 12/13/84 at Marion, Alabama File # Mobile 56C-215-

by SA LINDA C. THOMPSON LCT/mjk Date dictated 12/13/84

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APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ALBERT TURNER, SPENCER HOGUE, JR. AND EVELYN TURNER,
Defendants.

Criminal No. 85-00014

SECOND MOTION FOR DISCOVERY AND TO COMPEL PRODUCTION OF DOCUMENTS FOR IN CAMERA INSPECTION

Defendant Spencer Hogue, Jr., respectfully requests that the Court order the Government to produce for inspection and copying by defendant at a convenient time and place the following materials which are discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963), and *United States v. Agurs*, 427 U.S. 97 (1976), because of their exculpatory nature with regard to Counts 2-29 of the indictment and perhaps Count 1, depending upon the Government's response to the Magistrate's two-page Order dated May 24, 1985:

(1) All interview notes, memoranda, reports, FBI "302" forms, or any other oral or written statements (as defined in Mr. Hogue's original Motion for Discovery) reflecting that any Perry County, Alabama voter,

including those mentioned in the indictment in this case and/or listed below, invited, consented to, agreed to, authorized, acquiesced in, acknowledged, knew of and did not protest, knew of and remained silent, or otherwise knew of a change made in his or her absentee ballot by Mr. Hogue or one of the other defendants or any other person affiliated with the PCCL:

(a) Willie Lee
(b) William E. Wimes
(c) Edward Shelton
(d) Mary D. Shelton
(e) Loretta Shelton
(f) Fannie Shelton
(g) Mims Shelton
(h) Cleophus Shelton
(i) Mattie Shelton
(j) Mattie Perry
(k) Will Fuller
(l) Henry Jackson
(m) Reaner Green
(n) Morgan Harris
(o) Fannie D. Williams
(p) Alma Price
(q) Pearl Brown
(r) Mary Louise Pryor
(s) Ethel Ford

(t) Joe Tanner

(u) Ezell Stephens

(v) Maggie Fuller

(w) Archie Ward

(x) Murphy Reed

(y) Angela Miree

(z) Zayda E. Gibbs

(aa) Lillian Fuller

(bb) Any other person

(2) All notes, memoranda, reports, FBI "302" forms, or any other oral or written statements reflecting that any Perry County, Alabama voter, including those mentioned in the indictment in this case and/or listed in item (1) above, was talked into making or persuaded by any means whatsoever to make a change in his or her absentee ballot by Mr. Hogue or one of the other defendants or any other person affiliated with the PCCL.

(3) All grand jury testimony or other written or oral statements by the persons described in item (1) above stating that the person making the statement or some other person:

(a) invited, consented to, agreed to, authorized, acquiesced in, acknowledged, knew of and did not protest, knew of and remained silent, or otherwise knew of a change made in his or her absentee ballot by Mr. Hogue or one of the other defendants or any other person affiliated with the PCCL;

(b) was talked into making or persuaded by any means whatsoever to make a change in his or her absentee ballot by Mr. Hogue or one of the other defendants or any other person affiliated with the PCCL.

Mr. Hogue further requests that the Court order the Government to produce for in camera inspection by the Court all of the FBI "302's" and any other FBI or other law enforcement authority's reports on any person named in the indictment and/or listed above for examination by the Court to determine whether those reports or any portion of them fit within requests (1) and (2) above.

Mr. Hogue further requests that the Court order the Government to produce for in camera inspection by the Court all of the grand jury testimony or other oral or written statements by any person named in the indictment and/or listed above for examination by the Court to determine whether that testimony or those statements fall within request (3) above.

In support of this Motion, Mr. Hogue states the following:

1. In the May 24, 1985, Recommendation of the Magistrate, it is noted that at a May 21, 1985, hearing:

> [T]he Government stated without qualification that with respect to each of those counts [two through twenty-seven] the evidence and the theory of the prosecution is that a Defendant changed a candidate selection made by the voter and that in each case the change was not authorized in any fashion by the voter.... The Magistrate construes counts three [two?] through twenty-seven as being limited to charges (1) that the Defendants changed the candidate selection on a ballot, (2) that there was no form of acquiescence or consent to the change by the voter, (3) that the altered ballots were placed in the mail, and (4) that the alterations and mailings were in furtherance of the scheme to defraud described in count two.

Recommendation of the Magistrate at 4-5 (emphasis added).

2. Under the above theory of the indictment, any evidence that any change in any absentee ballot was "acquiesce[d]" in or "consented to ... by the voter" or "was ... authorized in any fashion by the voter" would tend to defeat the Government's case as to counts two through twenty-seven and is accordingly highly exculpatory.

3. On information and belief, the requested items contain evidence of acquiescence, consent and authorization. See sealed exhibits CC, KK, LL and MM.

4. Mr. Hogue has previously asked for these materials in various ways. See Motion for Discovery (No. 85-25), Motion for Discovery (No. 85-14) (e.g., paragraph 25), Motion to Compel Discovery Ordered by the Court (dated May 30, 1985). As the events laid out in the May 30 and May 31, 1985, Motions to Compel Discovery Ordered by the Court (Cr. 85-25 and 85-14) reflect, however, the Government has not yet produced any of the above-requested items and takes the position that it need not do so in advance of in camera inspection and an order by the Court.

Wherefore, the Court should order that the requested materials be produced for in camera inspection and that Brady material in them be produced to defendants forthwith for inspection and copying.

Respectfully submitted,

JULIUS LeVONNE CHAMBERS
C. LANI GUINIER
JAMES S. LIEBMAN
16th Floor
99 Hudson Street
New York, New York 10013
(212) 219-1900

BY: James S. Liebman
JAMES S. LIEBMAN

ATTORNEYS FOR DEFENDANT
SPENCER HOGUE, JR.

CERTIFICATE OF SERVICE

I, James S. Liebman, hereby certify that copies of the foregoing Second Motion for Discovery and to Compel Production of Documents for In Camera Inspection were served by United States mail, first class postage prepaid, addressed to the following:

Hon. E. T. Rolison
Assistant United States Attorney
Federal Building
Mobile, Alabama 36652

Dated this 1st day of June, 1985.

JAMES S. LIEBMAN

APPENDIX K

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA §
vs. § CRIMINAL NO. 85-00014
ALBERT TURNER, et al §

RESPONSE TO MAGISTRATE'S DISCOVERY ORDER OF JUNE 18, 1985

Comes now the United States by and through the U. S. Attorney for the Southern District of Alabama and responds to the Discovery Order of the Magistrate dated June 18, 1985, as follows:

1. The portion of the grand jury testimony of Rev. O. C. Dobynes which concerns the ballot of Mary Louise Pryor is included herewith.

2. The grand jury testimony of Earl Ford is included herewith.

3. The doctor for Reaner Green had written a letter about her condition showing a diagnosis of "probable dementia," which would relate to "mental incapacity or a sensory problem affecting memory or ability to recall or testify," pursuant to the Magistrate's Order. The letter is attached. We have only two other letters from doctors, which relate only to physical conditions. A third letter relates to Mattie Phillips and states that she has been given an antidepressant due to

reactive depression for stress from the impending trial. The doctor is W. Sterling Haynes.

4. Attached are statements given to the FBI by voters whose ballots were handled by a defendant, filed at the Clerk's Office, showing unchanged votes for non-PCCL candidates or where no vote was cast.

5. Attached are statements of voters whose ballots were altered but who said any of the defendants could change it or that they changed it themselves.

6. Also attached is a copy of one statement by a woman who said she was not aware of any discussion of absentee ballots at the meeting at the church on September 3, 1984.

This is our understanding of the Orders entered by the Magistrate on June 18, 1985, and constitutes our compliance therewith.

Respectfully submitted,

J. B. SESSIONS, III
UNITED STATES ATTORNEY

E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing response has been served upon counsel for all parties by hand delivery this 19th day of June, 1985.

E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY

APPENDIX L

R(2) VI

U.S. Department of Justice

United States Attorney
Southern District of Alabama

305 United States Courthouse
Post Office Drawer E
Mobile, Alabama 36601

June 14, 1985

Howard Moore
Moore & Lawrence
445 Bellevue Ave.
Third Floor
Oakland, CA 94610

Robert Turner
P.O. Box 1305
Selma, Al 36702-1305

John England
2616 8th St.
Tuscaloosa, AL 35401

Margaret Carey
Center for Constitutional Rights
c/o McTeer & Bailey, P.A.
P.O. Box 1835
Greenville, MS 38701-1835

Julius LeVonne Chambers
C. Lani Guinier
James S. Liebman
99 Hudson St., 16th Floor
New York, NY 10013

John L. Carroll
P.O. Box 5042
Montgomery, AL 36103

Morton Stavis
Center for Constitutional Rights
853 Broadway, 14th Floor
New York, NY 10003

RE: U.S.A. v. Albert Turner, et al
Cr. No. 85-00014, S.D., AL

Dear defense counsel:

This confirms our compliance with the Order of Magistrate Sims dated June 5, 1985. The requested material is attached. We have provided copies of a statement by Zayda Gibbs as the closest thing we have to Brady material. We have previously responded to Number 16, and we do not have any additional information requested thereby. We expect that this response will be distributed among all defense counsel.

Sincerely,

J. B. SESSIONS, III
UNITED STATES ATTORNEY

By ET Rolison Jr
E. T. Rolison, Jr.
Assistant United States Attorney

cc: Honorable Emmett R. Cox

FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 1075/84

51. ZAYDA EULA GIBBS, Thompson Street, Post Office Box 645, Marion, Alabama, was advised of the identity of the interviewing agent and that she was being interviewed regarding an election law violation; mail fraud violation.

GIBBS advised that she is a retired practical nurse receiving Social Security benefits.

GIBBS advised that she voted absentee ballot in the Perry County, Alabama election of September 4, 1984, as she is physically unable to go to the voting polls.

GIBBS advised that no one specifically requested she voted absentee ballot, with the absentee ballot being received by mail.

GIBBS advised that no one tried to influence her vote, and no one tried to intimidate her regarding her vote.

GIBBS was exhibited an affidavit of absentee voter envelope with the name ZAYDA E. GIBBS and identified the name as being in her handwriting.

GIBBS observed an official absentee primary election ballot dated September 4, 1984 which had been removed from the affidavit of absentee voter envelope, stating that the ballot is as she voted.

GIBBS advised that she returned the ballot in the envelope by mailing the envelope herself at the Marion, Alabama post office.

GIBBS is described as a black female, date of birth - June 21, 1899, place of birth - Georgia, Home Telephone No. 683-6870.

Investigation on 9/26/84 at Marion, Alabama File # Mobile 56C-215 -59

by SA JAMES F. BODMAN, JR. JFB/slm Date dictated 9/28/84

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RECEIVED
JAN 30 1985
UNITED STATES ATTORNEY
Southern District of Alabama
Mobile, Alabama

* * * * * * * * * * * * * * * * * *

GRAND JURY TESTIMONY *
In the Matter of: *
*
ALBERT TURNER, *
SPENCER HOGUE, JR. *

* * * * * * * * * * * * * * * * * *

The Grand Jury testimony of SPENCER HOGUE, JR., taken on the 25th day of January 1985.

It could have been a week before?

THE WITNESS:

As much as two weeks before.

MR. ROLISON:

Q Did anybody open them at your house and tamper with any of those that I've shown you?

A Oh, no. I keeps them in a secret place.

Q Secret place. Okay.

A Nobody knows where it is but myself and my wife.

Q You don't think she tampered with any of those?

A No, no. She didn't tamper with them.

Q Zayda Gibbs. Do you know Ms. Gibbs? Is it a Ms. Zayda Gibbs?

A Yeah. Zayda Gibbs. Yeah.

Q Tell me about that one. Did you handle that ballot?

A Yeah. I mailed it. I do know that.

Q You mailed it?

A I may have notarized it.

Q Yes, you sure did.

A All right.

Q Were there any changes on Ms. Gibbs' ballot?

A Well, I need to see that, too.

Q All right. Do you remember any changes being made on that? Do you remember any changes being made on that?

A It's just like I say. I handle so many, I can't recall about those changes until I take a look.

Q Okay.

A One reason I want to take a look, I want to make sure it's my signature and everything is there.

Q All right. Would it surprise you to know a vote on that ballot had been changed that had been cast for Reese Billingslea? Would that surprise you?

A Let me see what you're talking about.

Q All right. Let's look. It says two eighty-nine. Are you saying for sure you mailed that ballot?

A Yeah. Anytime you see that on there, you know I mailed it. Ain't no doubt about that.

Q I just want to get all that straight. And 1999 -- you wrote that up there as her birthday?

A That's right.

Q And you helped her vote?

A Let's see what you've got there.

Q Well, did you help her vote? I'm trying to refresh your recollection now. Did you help her vote?

A Well, I don't try to remember all this stuff.

Q You're pretty good at it. After we show you the ballots, you get real good.

A I just want to make sure it's my work. Because sometimes somebody else can come behind you.

Q Okay. That's about the same color ink as all this, though,isn't it?

A Almost. One could be a little bit darker shade. I don't know.

Q Well, now, since you've had a chance to look at it, does that refresh your recollection in any kind of way?

A Yeah. It refreshes me.

Q Tell me how.

A All right. That's one I convinced to go with our slate, too.

Q But she had had a mark up there by Reese Billingslea?

A That's right.

Q And she also had one down here by Warren

Kynard?

A Yeah. I convinced her.

Q And you convinced her?

A That's right.

Q Okay.

A GRAND JUROR:

Convincing a person to change their vote, y'all must have had a pretty good thing going; right?

THE WITNESS:

Yeah. We've been working with these people ourselves since '62 for various things. And we have never deceived them. So whenever we make a representation, they almost go with us. Ain't no doubt about it. The people in my community do.

A GRAND JUROR:

E. T., can I ask one question?

MR. ROLISON:

Yes.

A GRAND JUROR:

You said earlier that you put it around by word of mouth who y'all's slates were. But yet instead you wait until the night they were voting and y'all changed their minds. I don't understand that.

Mr. PATRICK. Third, Mr. Chairman, the affidavit of Bobby Singleton, which I gather has also been circulated to the committee, I would ask that it be made a part of the record.

Senator DENTON. I am not familiar with that offhand, so if you have a copy?

Mr. PATRICK. I have a copy and I can make available as many copies as you like. I have a copy now, which I can submit now. I understood that it had been submitted in number to the staff.

You are welcome to my copy, if you like.

Senator DENTON. Maybe, I could just glance at it.

I do not remember having seen this, perhaps the distribution was as selective as the original, anonymous document which I learned about the night before the hearing and had been circulated for some time, to others, I understand.

Mr. PATRICK. Mr. Chairman, I know nothing about the circulation. I am offering it only because Mr. Singleton is not here and I had been asked to put it before the committee formally to be a part of the record.

Senator DENTON. Without objection it shall be entered into the record.

[The information follows:]

AFFIDAVIT

STATE OF ALABAMA	)	**AFFIDAVIT**
	)	
	)	**OF**
	)	
COUNTY OF HALE	)	**BOBBY SINGLETON**

****

Before me, Joseph T. Roy, Sr., a Notary Public in and for the State and County, personally appeared Bobby Singleton, who after being duly sworn, deposes and saith on oath as follows:

1. I am a black resident of Hale County Alabama. I was born in Hale County and except for the time that I attended College at Alabama State University in Montgomery Alabama I have always lived in Hale County. In 1984 I ran for a position as a City Councilman on the Greensborso, Alabama City Council. The general election resulted in a runoff between the incumbent and myself. This was the first time that a black person had made it to a runoff in any Greensboro City election.

2. During the years that I have resided in Hale County there have been many instances where whites have used illegal means to prevent blacks from obtaining elected positions. During the last election there were numerous methods used to prevent me from obtaining a position on the Greensboro City Council.

3. Bill Kendrick, a black resident of Hale County, and I reported this conduct to the Justice Department, the F.B.I. and local officials. As has been the history in Hale and other Black Belt counties no action has been taken against these whites.

4. For the purposes of this affidavit I will only discuss instances of voter fraud by whites in the 1984 election which I have reported to federal officials.

GJR B.S.

5. I grew up in an area of Greensboro called the Depot area. This is a predominantly black area and the base of my support for public office. The residents of this area had always voted in the Greensboro city elections, and in fact had voted in the 1984 General election. However, when I made it to the runoff against the white incumbent the city officials told a substantial number of the black residents of the Depot area that they would not be

B.S. GJR

allowed to vote in the runoff because the city had discovered that part of the Depot as GJR area was actually not in the city. On the day of the runoff election police officers came out to the Depot as GJR community and parked their car at one of the entrances to the community. The police officers then told the residents that from the point where their car was parked back was not in city limits and those residents would not be allowed to vote.

6. Some of the residents ignored the officers and went to the polls. When they arrived at the polls they were not allowed to vote. They were told by Sharon Davis, an election official, that they were not residents of Greensboro and if they proceed to vote a challenge ballot, a ballot for persons whose name does not appear on the voter rolls but who believes s/he is entitled to vote, they would be guilty of a felony.

7. Another predominantly black area of Greensboro is the Eastridge Community. This is a 50 unit housing complex built in 1980. The residents of this community were never told that they were part of the city and could vote in city elections; this information was deliberately withheld from them. City officials allege that they had made it known to the Eastridge residents that they could vote in city ~~officials~~ election as GJR; however, this is in direct conflict with what the residents informed me. I learned that this community was in the city on the day of the runoff. It was somewhere between 2 and 3 o'clock. I put a speaker on the outside of my car and parked outside of the Eastridge Community where I announced over the speaker that the residents of Eastridge were eligible to vote in the city election. Even after we got some of the people of the Eastridge Community to go to the polls they were told by polling officials that they could not vote because their names did not appear on the voter roles. Bill Kendrick and I informed Sharon Davis, an election official, that the Eastridge residents should be allowed to vote and she saw to it that tha ones coming in subsequent should be allowed to vote. The result of what occurred in Eastridge was that very few of the black residents actually voted.

8. There was evidence of white voter fraud involving the

use of absentee ballots in the 1984 runoff. I reported this evidence to the F.B.I. and the Justice Department requesting that they investigate in this area. As has been the history in Hale County the white voter fraud went uninvestigated. The evidence is as follows:

a. Whites illegally solicited absentee ballots from residents of the nursing home.

b. In the runoff the number of absentee ballots doubled and the number of absentee ballots by whites in proportion to their population in the county was astronomical.

c. I received an anonymous letter stating that the Mayor was seen altering absentee ballots from one of the boxes.

d. I have had problems/with the city officials sending ballots to blacks who have applied for them with my assistance.

9. On the day of election a person named Bill Daniel, a male, was positioned outside a polling place intimidating and harrassing black voters and poll watchers by:

a. Making black poll workers move a certain distance from the polling place and not requiring white poll workers to do the same.

b. Telling blacks as they were taking persons into the polling place that they could only take a limited number of persons into the polls that they could assist in voting.

c. Walking back and forth in front of the polling place in an intimidating manner. He was eyeing black persons and acting like he was writing things down about them, just generally giving them the impression that he was monitoring everything that they had done. Some of the poll workers were very young and they became concerned that were doing something that would get them in trouble.

d. He was brought there and then taken away by the Chief of Police.

Bill Kendrick approached him and asked him who he was. He said that he was an election official. He then said that he was a federal observer. Bill Kendrick and I then asked to see his badge or some credentials. He said that he would not show us anything. Kendrick and I then went to Sharon Davis, the ~~county~~ City. B.S GTR clerk and election official, to verify that this person was a federal observer. Ms Davis informed us that it was all right for this man to be at the polls because he was an official and did not have to show us a badge or identification.

10. I received information from Shanda Washington, a black female resident of Greensboro, that she overheard a conversation between Bill Daniel and the Mayor concerning Bill Daniel going out and impersonating a federal official.

11. Bill Kendrick and I reported the above-stated information to Bill Roberts, who was employed with the Voting Rights Section of the Justice Department and Special Agent Leslie B.S GTR Sue with the F.B.I. Bill and I also went and met ~~an~~ another B.S GTR attorney with the Justice Department. I was told by Special Agent Sue that the information I was providing was not specific enough and also that the complaints were not worthy of the investigation because I was only talking about a small number of votes which would not have affected the outcome of the election. In fact, however, the number of votes could have affected the outcome of the election.

Bobby Singleton
Bobby Singleton

Sworn to and subscribed before me this 18th day of March, 1986.

Joseph T. Kay Jr.
Notary Public State at Large
My Commission Expires: 7-30-86

Mr. PATRICK. Thank you.

Next is the brief of the United States in the case of the *United States* v. *Howard Moore*, which was filed in the U.S. Court of Appeals for the 11th Circuit, and prepared by Mr. Sessions' office.

I gather that that also has been circulated to the committee, and I would ask that that be made a part of the record at this time.

Senator DENTON. Without objection, so ordered.

Mr. PATRICK. Similarly, the brief of the United States in the matter of *United States* v. *Spencer Hogue*, also filed in the U.S. Court of Appeals for the 11th Circuit, and prepared by Mr. Sessions' office I would ask that that be made a part of the record.

Senator DENTON. Without objection, so ordered.

Mr. PATRICK. And last, Mr. Chairman, my own prepared statement and affidavit which have previously been made available to the committee, I would ask that they be made a part of the record.

Senator DENTON. Without objection, so ordered.

[The information follows:]

85-7504

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

85-7504

UNITED STATES OF AMERICA,
Appellee,

vs.

HOWARD MOORE, JR.,
Appellant.

BRIEF OF THE APPELLEE

JURISDICTION

This is an appeal from the United States District Court for the Southern District of Alabama.

PREFERENCE

This is an appeal from a criminal conviction in the District Court, and is therefore entitled to a preference as per Eleventh Circuit Rule 11, Appendix One(1)(2).

J. B. SESSIONS, III
UNITED STATES ATTORNEY

E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY
ATTORNEYS FOR APPELLEE

ROOM 311, U. S. COURTHOUSE
POST OFFICE DRAWER E
MOBILE, ALABAMA 36601

STATEMENT REGARDING PREFERENCE

This is an appeal from a criminal conviction in the district court, and is therefore entitled to a preference as per Eleventh Circuit Rule 11, Appendix One (a)(2).

STATEMENT REGARDING ORAL ARGUMENT

The Appellee, United States of America, suggests that the issues presented can be determined upon the record and that oral argument would not benefit the panel.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I.

WHETHER THE DISTRICT COURTS' EXCERCISE OF ITS SUMMARY CONTEMPT POWER WAS AN ABUSE OF ITS DISCRETION.

STATEMENT OF THE CASE

i. Course of Proceedings and Disposition Below and

ii. Statement of the Facts.

On June 24, 1985, during the trial of United States v. Albert Turner, et al in the United States District Court, Judge Emmett R. Cox stated from the bench that he found appellant, Howard Moore, Jr., attorney for defendant Albert Turner, guilty of criminal contempt. (R3-66).

At that time Judge Cox stated that he would ask another judge to handle the contempt hearing. (R3-66).

On June 25, 1985, Judge Cox denied appellant's oral motion to rescind the adjudication. (R3-67/80).

On July 8, 1985, Judge Cox made the certification required by Federal Rules of Criminal Procedure P. 42(a) and requested the assignment of another judge to fix punishment. (R1-1/3).

On July 25, 1985, appellant filed his motion for reconsideration.

By Memorandum Opinion and Order, Judge Cox granted the motion for reconsideration, but refused to rescind or modify his July 8, 1985, Order.

The case was assigned to Judge W. B. Hand, Judge Hand took the position that he had no authority to consider whether appellant was properly convicted of contempt. (R2-3/4).

After allocution, on July 26, 1985, Judge Hand fined appellant $500, and stayed execution pending appeal.

On July 26, 1985, appellant filed his notice of appeal.

The Underlying Criminal Trial

Albert Turner, Evelyn Turner, and Spencer Hogue, Jr. were on trial for conspiracy, mail fraud and voting more than once, when the trial judge summarily found Attorney Howard Moore, Jr. in contempt of court. (R3-66).

During pretrial proceedings the defendants moved to dismiss the case on the grounds of selective prosecution. Judge Cox denied the defendant's motions and at several stages during pretrial and trial, instructed the defense attorneys not to interject selective prosecution into the case. (R1-1). (R3-69).

The trial judge in his Memorandum Opinion and Order stated his reason for finding Attorney Howard Moore, Jr. guilty of contempt. (R1-1).

iii. Scope of Review

Whether the District Court's exercise of its summary contempt power was an abuse of its discretion.

STATEMENT REGARDING JURISDICTION

This is an appeal from a final judgment of the district court in a criminal case. The jurisdiction of this Court is invoked under 28 U.S.C. 1291.

SUMMARY OF THE ARGUMENT

The District Court's exercise of its summary contempt power is reviewed for an abuse of discretion.

In this case the court chose to punish appellant, pursuant to Federal Rules of Criminal Procedure 42(a) rather than under Federal Rules of Criminal Procedure 42(b).

The judge ruled that the contempt of court by Attorney Moore was committed in the "actual presence of the Court." The judge determined that exigent circumstances required an immediate finding of criminal contempt in order to punish the offender for his misconduct and to deter that kind of conduct during the trial, the court further found that immediate punishment was not required.

Based on the entire record in this case, it is clear that the trial judge did not abuse his discretion in summarily finding the appellant guilty of contempt.

ARGUMENT

ISSUE I

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN FINDING APPELLANT GUILTY OF CONTEMPT.

The standard of review for this Court is whether the trial court abused its discretion in finding the appellant in contempt.

It is clear from the record that the contempt was committed in the presence of the court. United States v. Baldwin, 770 F.2d

1550 (11th Cir. 1985). Matter of Heathcock, 696 F.2d 1362 (11th Cir. 1983).

If the contempt was committed in the presence of the trial court then the proper procedure, if trial court desires, would be to proceed under Federal Rule of Criminal Procedure 42(a) as was done by Judge Cox. United States v. Lowery, 733 F.2d 441 (7th Cir. 1984).

Judge Cox stated in the record that he had never found any other attorney in contempt of his court. (R3-70).

Judge Cox entered an order stating the exact reason why he had found the defendant in contempt. (R1-1).

The trial judge must have the power to summarily hold an individual in contempt or disorder and disruption will rule the court room.

The trial court had warned all lawyers at the start of the trial that the issue of selective prosecution was not to be presented or argued to the jury. The trial judge found that appellant had violated his order. The trial judge did not sentence appellant but left that to another judge.

Judge W. B. Hand sentenced the appellant to a fair sentence and the judgment of Judge Cox and Judge Hand should not be over turned.

CONCLUSION

For the foregoing reasons, it is submitted that the judgments of conviction are due to be affirmed.

Respectfully submitted,

J. B. SESSIONS, III
UNITED STATES ATTORNEY

ET Rolison
E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY

ATTORNEYS FOR APPELLEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of the Appellee has been served upon Mr. Morton Stavis, Attorney for Appellant, by placing same in the United States Mail, postage prepaid, properly addressed to Center for Constitutional Rights, 853 Broadway, 14th Floor, New York, New York 10003, this 18 day of February, 1986.

ET Rolison
E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY

85-7518

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

85-7518

UNITED STATES OF AMERICA,
Appellee,

vs.

SPENCER HOGUE, JR.,
Appellant.

BRIEF OF THE APPELLEE

JURISDICTION

This is an appeal from the United States District Court for the Southern District of Alabama.

PREFERENCE

This appeal is entitled to preference in processing and disposition pursuant to Rule 11 of the rules of this Court and section (a)(2) of Appendix One to the rules.

J. B. SESSIONS, III
UNITED STATES ATTORNEY

E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY
ATTORNEYS FOR APPELLEE

ROOM 311, U. S. COURTHOUSE
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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I.

WHETHER THE GOVERNMENT SHOULD BE COLLATERALLY ESTOPPED FROM PROSECUTING THE DEFENDANT FOR OBSTRUCTION OF JUSTICE AFTER THE DEFENDANT HAS BEEN ACQUITTED IN A PRIOR TRIAL OF CONSPIRACY, MAIL FRAUD AND VOTING MORE THAN ONCE.

STATEMENT OF THE CASE

i. Statement of Facts

ii. Course of Proceedings and Disposition Below

In January of 1985, Albert Turner, Evelyn Turner and Spencer Hogue, Jr. were indicted on charges of conspiracy, mail fraud, and voting more than once. United States v. Turner, et al, District Court No. CR. 85-00014.

In March of 1985 Spencer Hogue, Jr. was indicted by the grand jury on one count of obstruction of justice. United States v. Hogue, District Court No. CR. 85-00025.

In April 1985 the United States Attorney filed a motion for consolidation for trial of United States v. Albert Turner, et al, District Court No. CR. 85-00014 and United States v. Spencer Hogue, Jr., District Court No. CR. 85-00025. (R1-22).

In May 1985 Spencer Hogue filed a memorandum in opposition to United States Attorney's motion for consolidation of United States v. Albert Turner, et al, District Court No. CR. 85-00014 and United States v. Spencer Hogue, District Court No. CR. 85-00025. (R1-See Memorandum dated May 15, 1985 filed by appellant).

In June 1985 Judge Cox entered an order denying United States Attorney's motion for consolidation. (R1-41).

In July 1985 Spencer Hogue, Jr., Albert Turner and Evelyn Turner were found not guilty in United States v. Albert Turner, et al, District Court No. CR. 85-00014.

In United States v. Albert Turner, et al, District Court No.

CR. 85-00014, Spencer Hogue, Jr. was charged in Count 24 with a substantive count of mail fraud Lillian Fuller, a witness in that case, is expected to be a witness against the defendant in United States v. Spencer Hogue, District Court No. 85-00025, (obstruction of justice).

On July 31, 1985 Spencer Hogue, Jr. moved to dismiss United States v. Spencer Hogue, Jr., District Court No. CR. 85-00025 under the Double Jeopardy Clause in that the Government should be collaterally estopped from attempting to prove a fact against him that had been resolved favorable in the previous case.

Judge Cox summarily denied the defendant's motion to dismiss based on the Double Jeopardy Clause. R1-69).

Spencer Hogue, Jr. immediately appealled on authority of Abney v. United States, 431 U.S. 651 (1977). (R1-74).

STATEMENT REGARDING JURISDICTION

This is an appeal from the denial of Mr. Hogue's motion to dismiss on double jeopardy grounds. The Court has jurisidction to hear this appeal under the collateral order exception to 28 U.S.C. §1291. Abney v. United States, 431 U.S. 651 (1977).

SUMMARY OF THE ARGUMENT

The Double Jeopardy clause protects a person against successive prosecutions for the same crime.

In criminal cases the doctrine of collateral estoppel is a corollary of the Double Jeopardy Clause.

The doctrine of collateral estoppel requires dismissal of criminal charges against an individual only if, in order to prove those charges, government must relitigate an issue of ultimate fact that necessarily was resolved in favor of the defendant in a previous trial; a crucial issue is whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.

This Court has said that on a claim of Double Jeopardy based on collateral estoppel two inquiries must be made:

> "First, what facts were necessarily determined in the first lawsuit.... Second, has the government in a subsequent trial tried to relitigate facts necessarily established against it in the first trial?"

The defendant in United States v. Albert Turner, et al, District Court CR. 85-00014, went to trial on charges of conspiracy, mail fraud, and voting more than once.

The trial judge instructed the jury on the elements of each offense.

The trial judge did not instruct the jury on the elements necessary to convict the defendant of obstructing justice 18 U.S.C. 1503; therefore the defendant could not have been in jeopardy under 18 U.S.C. 1503.

The jury could have reached its decision to acquit Spencer Hogue without resolving any of the issues necessary to convict him of obstructing justice.

The defendant should not be allowed to escape prosecution based on the doctrine of collateral estoppel in a case where the government filed a motion for consolidation of causes and the defendant's opposition motion was granted by the trial court.

ARGUMENT

ISSUE I

THE GOVERNMENT SHOULD NOT BE COLLATERALLY ESTOPPED FROM PROSECUTING THE DEFENDANT FOR OBSTRUCTION OF JUSTICE AFTER THE DEFENDANT HAS BEEN ACQUITTED ON CHARGES OF CONSPIRACY, MAIL FRAUD AND VOTING MORE THAN ONCE.

The Double Jeopardy Clause protects a person against successive prosecutions for the same crime. United States v. Smith, 757 F.2d 1161 (11th Cir. 1985), United States v. Ruggiero, 754

F.2d 927 (1985). In criminal cases the doctrine of collateral estoppel is a corollary of the Double Jeopardy Clause.

The doctrine of collateral estoppel requires dismissal of criminal charges against an individual only if, in order to prove those charges, the government must relitigate an issue of ultimate fact that necessarily was resolved in favor of the defendant in a previous trial; a crucial issue is whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration. United States v. Whitaker, 702 F.2d 901 (11th Cir. 1983).

The jury in United States v. Albert Turner, et al, District Court No. CR. 85-00014 (conspiracy, mail fraud, and voting more than once) could have grounded its verdict on several defense theories without considering the testimony of Lillian Fuller.

The only facts determined by the jury in United States v. Albert Turner, et al, District Court No. CR. 85-00014 were that the defendants were not guilty of conspiracy, mail fraud, and voting more than once.

The jury in United States v. Albert Turner, et al, District Court No. CR. 85-00014 was never instructed on the elements of 18 U.S.C. 1503, obstruction of justice.

The issue in this case is whether Spencer Hogue, Jr. obstructed justice, and the ultimate issue of fact decided in his former trial was that he was not guilty of conspiracy, mail fraud or voting more than once.

The Government filed a motion to consolidate this case with the former case and the defendant objected and his objection was granted.

If the defendant's Motion to Dismiss (based on Double Jeopardy Clause) is granted by this court, then the defendant will have escaped prosecution on this charge (obstruction of justice) and in effect the former jury (though not instructed on the element of the offense) will have acquitted him.

CONCLUSION

For the foregoing reasons, it is submitted that the order entered by the court to deny defendant's Motion to Dismiss based on the Double Jeopardy Clause should be affirmed.

Respectfully submitted,

J. B. SESSIONS, III
UNITED STATES ATTORNEY

ET Rolison Jr
E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY

ATTORNEYS FOR APPELLEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of the Appellee has been served upon C. Lani Guinier and Deval L. Patrick, 99 Hudson Street, 16th Floor, New York, New York 10013, Attorneys for Appellant, by placing same in the United States Mail, postage prepaid, properly addressed, this 13th day of February, 1986.

ET Rolison Jr
E. T. ROLISON, JR.
ASSISTANT UNITED STATES ATTORNEY

Statement of

Deval L. Patrick

NAACP Legal Defense and Educational Fund, Inc.

My name is Deval L. Patrick. I am an Assistant Counsel at the NAACP Legal Defense and Educational Fund, Inc. in New York City. I participated in the defense of Spencer Hogue, Jr., against charges of conspiracy, mail fraud and voting-more-than-once in the United States District Court for the Southern District of Alabama for several weeks in the early summer of 1985. The United States Attorney for the Southern District, Jeff B. Sessions, III, conducted the prosecution in that case. In view of my experience with Mr. Sessions in that case, I wish to bring four issues to the Committee's attention in connection with its review of his suitability for the federal bench:

First, although all of the circumstances germane to the case arose and all of the witnesses who would tesify resided near Selma, Alabama, Mr. Sessions' office attempted to have this case tried in Mobile, some 103 miles distant. Though the court ultimately decided to hold the trial in Selma, it agreed -- with the government's acquiescence -- to empanel the jury in Mobile and bus the jury to Selma for trial. The sole discernible difference between Mobile and Selma was that the concentration of black citizens in the jury pool drawn from Mobile was considerably less than it would have been in Selma.

Second, in the course of the trial the government impeached several of its own witnesses, in an apparent attempt to prove its case through negative inferences. At one point, Mr. Sessions' assistant examined a government witness while standing beside the jury with a legal pad with the words "WITNESS LIES" or "LYING" inscribed in large, clearly legible red letters upon it. When the incident was brought to the court's attention, the court instructed the government to cease. Mr. Sessions did not reprimand his assistant.

Third, the government proceeded on several counts against Mr. Hogue that were supported by no evidence. Of the twenty-six counts of mail fraud brought against Mr. Hogue, twenty were dismissed at the close of the government's case on the ground that Mr. Sessions had produced no evidence whatsoever inculpating against Mr. Hogue.

Fourth, after the jury acquitted Mr. Hogue of all charges, Mr. Sessions' office attempted to proceed upon a second indictment based upon some of the very same facts resolved in Mr. Hogue's favor in the previous trial. That question is now on appeal before the United States District Court of Appeals for the Eleventh Circuit. Mr. Sessions' office filed a brief which consisted of nothing more than nine conclusory sentences of argument on the merits. In my opinion, the brief was entirely useless in narrowing and clarifying the issues, if not frivolous.

These are some of the issues that arise from my experience litigating against Mr. Sessions, and that cause me to question whether he has the temperament, judgment and fairness appropriate for a federal judge.

IN THE UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

In the Matter of the Nomination of

JEFFERSON BEAUREGARD SESSIONS, III

for Appointment to the United States District

Court for the Southern District of Alabama

AFFIDAVIT OF DEVAL L. PATRICK

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, DEVAL L. PATRICK, being duly sworn, depose and say as follows:

1. I am a staff attorney at the NAACP Legal Defense and Educational Fund, Inc. in New York City, a position I have held since 1983. My practice at the Legal Defense Fund has primarily involved federal constitutional issues arising out of the criminal justice context.

2. Before joining the Fund, I served for one year as law clerk to a circuit judge on the United States Court of Appeals for the Ninth Circuit (see Appendix A). Between that experience and my present position, I would estimate that I have either reviewed or directly participated in well over 50 criminal cases.

3. In the Spring of 1985, the Legal Defense Fund defended Spencer Hogue, Jr. in a trial in federal court in the Southern District of Alabama. Mr. Hogue was charged with conspiracy, mail fraud and voting-more-than-once as a consequence of his longstanding practice of helping others in his community to fill out their absentee ballots. I participated in that defense. Mr. Sessions, with two of his assistants, represented the government.

4. Mr. Sessions apparently sought to prove his case mainly by negative inference. For example, the government read into evidence Mr. Hogue's exculpatory Grand Jury testimony,

only to argue in closing that he was lying. In addition, the government repeatedly called witnesses to the stand only to impeach their testimony during its own examination. (*See*, *e.g.*, Testimony of Murphy Reed.) At one point, the government's insinuations matured into an overt accusation: while questioning one of the government's witnesses, Mr. Sessions' assistant inscribed the words "WITNESS LIES" or "LYING" in large red letters across the top of her legal pad and held it within plain view of the jury. (*See* Trial Transcript at 206, 207.) Indeed, the message was so plain that a spectator standing near the courtroom entrance -- not far from where Mr. Sessions was standing -- could clearly make out the terms; it was the spectator who brought it to the attention of defense counsel and the court. (Trial Transcript at 207.)

Although the court admonished the assistant, Mr. Sessions did not himself reprimand her.

5. The government had a nurse in full dress, with a stethoscope, accompany most of it first several witnesses to the witness stand, though it made no showing that it was medically necessary to do so. I believe the government's suggestion that it had the witnesses' best interests in mind was disingenuous. For despite the medical frailty of most of the government witnesses, notwithstanding the fact that Selma was far more convenient a venue for *all* of its witnesses, Mr. Sessions attempted to have his case tried in Mobile, some 183 miles distant from where the relevant facts evolved and all the relevant witnesses resided. Apart from the obvious, but inconsequential convenience of a Mobile trial for Mr. Sessions and his staff, the only discernible difference between Mobile and Selma is that the concentration of black citizens in the Mobile jury pool was normally considerably less.

?
Some were young.

6. Several counts in the indictment against Mr. Hogue were supported by no evidence implicating Mr. Hogue. At the close of the government's case, 20 of the 26 mail fraud charges against Mr. Hogue were dismissed for Mr. Sessions' failure to present any evidence at all. Two more were dismissed because

the government's evidence was inadequate. Nevertheless, the government represented to defense counsel until the very end of its case that it intended to prove all of the counts alleged against Mr. Hogue.

7. Among the aspects of this case that were most troubling to me was the government's alleging, as part of the conspiracy charge, several facts that were not only lawful, but constitutionally protected. The government insinuated wrongfulness in the fact that the Perry County Civic League "was a civic association ..., the principal purpose of which was to foster a unitary society of citizens of all races working together for the common good"; that Mr. Hogue was a member of the Civic League; that the Civic League "publicly endorsed candidates running for the nomination of the Democratic Party"; that Mr. Hogue "approach[ed] citizens of Perry County and urge[d] said citizens to cast absentee ballots"; that he "did assist ... citizens of Perry County to submit ... applications for absentee ballots"; that he helped the voter vote his or her ballot, advocated that he or she vote it in favor of the candidates endorsed by the Civic League and mailed the ballot; and that Mr. Hogue attended a meeting of the Civic League at the Baptist Academy School in Marion, Alabama -- "[a]ll in violation of Section 371 of Title 18, United States Code." (See Indictment at 1-9.) On their face, these facts reflect nothing more than common political activity, activity critical to the vitality of democracy and thus protected by the First Amendment.

8. After the jury returned its verdict acquitting Mr. Hogue of all charges, Mr. Sessions announced that he would press another charge against Hogue based on some of the same facts found in his favor in the first trial. I appealed to the Court

obstruction
of
justice
charg

of Appeals and filed a brief arguing that the second prosecution constituted a violation of the Double Jeopardy Clause. In Mr. Sessions' appellate brief, his argument on the merits consists of 9 summary sentences. It borders on the frivolous.

9. In view of the above, I do believe that Mr. Sessions possesses neither the professional acumen nor the judicial temperament necessary and appropriate to the federal bench.

Under penalty of perjury,

DEVAL L. PATRICK

Sworn to and subscribed before
me this 12th day of March, 1986.

NOTARY PUBLIC

My commission expires ______________

Franklin Siegel
Notary Public, State of New York
No. 24-[illegible]
Qualified in Kings County
Commission Expires March 30, 1986

APPENDIX A

Deval L. Patrick
NAACP Legal Defense and Educational Fund, Inc.
99 Hudson Street
New York, New York 10013
(212) 219-1900

Education

1979-82 HARVARD LAW SCHOOL CAMBRIDGE, MA
J.D., June 1982. President of Legal Aid Bureau. Winner of upper round Ames Moot Court Competition.

1974-78 HARVARD COLLEGE CAMBRIDGE, MA
A.B. cum laude, June 1978. Concentration in English and American Literature. Member of Dunster House Committee (1975-76); Treasurer (1976-77); Chairman (1977-78). Member of Phillips Brooks House Assoc. Financial Board (1977-78). Dunster House squash team.

Law Clerkship

1982-83 Law Clerk for Judge Stephen Reinhardt, United States Court of Appeals for the Ninth Circuit.

Work Experience

1983-present NAACP LEGAL DEFENSE AND EDUCATIONAL FUND NEW YORK, NY
Staff attorney involved in general civil rights practice, particularly in capital punishment and voting rights cases.

Summer, 1981 HELLER, EHRMAN, WHITE & McAULIFFE SAN FRANCISCO, CA
A law clerkship in general litigation matters, including involvement in class action for detainees in county jail system.

Summer, 1981 SQUIRE, SANDERS & DEMPSEY WASHINGTON, DC
A law clerkship in general litigation and corporate matters.

Summer, 1980 WINSTON & STRAWN CHICAGO, IL
A law clerkship in general domestic and international corporate matters, as well as extensive involvement for state prisoners in a large class action brought under the federal Civil Rights Act.

Summers, 1977-79 FIRST NATIONAL BANK OF BOS. BOSTON, MA
An internship with the Bank's Mid-East/Africa Group.

Summers, 1975-76 CHEMICAL BANK NEW YORK, NY
An internship in both Mid-East/Africa (1975) and Southeast Asia (1976) banking areas.

Other Activities

Trustee of Milton Academy, Milton, Massachusetts (1985-); Member of selection committee for the Michael Clark Rockefeller Memorial Travelling Fellowship (1981-85).

Academic and Other Honors

National Merit Outstanding Negro Commendation (1974). Harvard College Dean's List (1974-78). Harvard Club of Chicago Scholar (1975). R.F. Herrick Class of 1916 Scholarship Award (1975). Lt. George C. Lee, Jr. Memorial Award (1976-78). Michael Clark Rockefeller Memorial Travelling Fellowship Award (1978-79) (worked and travelled in East and West Africa). George S. Leisure Award for Excellence in Advocacy (1981).

Personal Background

Born in Chicago, Illinois. Married, with one child. Speak some French. Enjoy reading, horseback riding, sailing, squash, letter-writing, jazz and classical music, the theatre, the opera and cooking.

References

On request.

Mr. **Patrick**. Mr. Chairman, I have been here 3 days now, and I suspect that these days are as long or longer for you as they have been for me and for everyone else who has suffered through what seems to be a really painstaking process.

I will stand by my statement and affidavit, as they are submitted, and I would ask that you consider those and other materials that go to the question of the *Perry County* case, not as going to the question of whether that case ought to have been prosecuted, but really how it was prosecuted.

Because it is on the matter of how they were prosecuted, I think, that the information is material to the nominee's quality as a lawyer, and to his integrity as a public servant. And without further comment, I will take any questions and in the interest of time, waive any further statement.

Senator **Denton**. I do not have any questions.

Senator Heflin?

Senator **Heflin**. I have nothing, Mr. Chairman.

Senator **East**. I have none, Mr. Chairman.

Reverend **Dobynes**. Mr. Chairman.

Senator **Denton**. Yes, Reverend.

Reverend **Dobynes**. Is it possible for me to read paragraph 6?

Senator **Denton**. Let me get your statement so that I can follow you, is that what you are referring to in your statement?

Reverend **Dobynes**. Yes.

Senator **Denton**. I end up with paragraph 7 being the one where it says, when I arrived at the Marion departure site.

Reverend **Dobynes**. That is the paragraph that I would like to read.

Senator **Denton**. All right, I think it is 7, sir.

Reverend **Dobynes** [reading].

> When I arrived at the Marion departure in early October, I saw a bus surrounded by six Alabama State Troopers, three or four Marion city policemen, about nine FBI agents and four game wardens. It looked like an armed camp. The streets around the courthouse were blocked off, about eight officers stood on different corners, with their guns ready to be drawn. I learned later that law enforcement officers surrounded the city while the buses were being loaded with witnesses. It was one of the most imposing chaotic scenes I have witnessed. Approximately 25 people, many of them in their seventies, Mrs. Pearl Brown, in her eighties and even nineties, most ailing and frightened, were loaded onto a bus under the watchful eye of more than 20 police officials.

Senator **Denton**. Do you have any further changes you want to make?

Reverend **Dobynes**. No, sir.

Senator **Heflin**. Reverend Dobynes, if a pistol is in its holster, is it ready to be drawn?

Reverend **Dobynes**. Provided if you have the safety mechanism loose. In any event of a police official or anyone who is carrying a pistol would fall, this pistol would stay there, but when the safety mechanism, then it is considered ready to be drawn.

Senator **Denton**. Yes, sir, it is the work of an instant to flick the strap so that you can draw the gun and then you have to take positive action on a hammer action pistol to pull the trigger. It is not like a rifle, with a hair trigger or anything like that.

But that, perhaps, is not germane.

We have your changes sir, and I would like to excuse everyone except Mr. Figures, at this point.

And thank you for your testimony.

I would like to call Mr. Ed Vulevich to the witness table. He is an Assistant U.S. attorney in Mobile, AL.

Mr. Vulevich, will you remain standing, so that I can swear you? Would you raise your right hand, sir?

Do you swear that the testimony that you will submit to this hearing is the truth, the whole truth, and nothing but the truth, so help you, God?

[Witness answers in the affirmative.]

Senator **Denton**. Please be seated.

I do have questions but if you wish to make a statement, you may do so, sir.

Mr. **Vulevich**. Well, the only statement I care to make sir, is that I came here on short notice. I read the morning paper, with certain allegations that were being made against Mr. Sessions. If there is anything that I can try to do to combat those allegations, which I think are unfounded, that is why I am here.

Senator **Denton**. Could you identify yourself by full name, your position, and how long you have served in that position?

Mr. **Vulevich**. My name is Edward John Vulevich, Jr., and I am assistant U.S. attorney, in the Southern District of Alabama and I have served in that capacity since October of 1969.

Senator **Denton**. Mr. Vulevich, I understand that you have followed this hearing in the press, and have requested to testify?

Mr. **Vulevich**. That is correct, sir.

Senator **Denton**. You have expressed concern over some of the testimony before this subcommittee, which has been reported; would you tell the committee of your concerns?

Mr. **Vulevich**. My concern is the tenor of the allegations against the integrity of Mr. Sessions, his abilities, his qualifications, to hold the important job that you are considering.

I know him to be a man of utmost integrity, of fair and good judgment, of total impartiality, and I think it is a bum rap when he is accused otherwise.

I have read statements attributed to Mr. Thomas Figures that were supposed to have been made by Mr. Sessions. I have only read this in the newspaper. I was in the office, the entire time that Mr. Figures was there. Obviously, I did not hear every conversation that took place between the two, but I never saw any of the conduct on Mr. Sessions' part that he has been accused of, such as trying to prohibit investigations. Mr. Sessions evaluates a case on its merits and on its merits only. He has had to prosecute friends, and I know that it is hard but that has never entered into it. And he does his job and he does it right.

Senator **Denton**. Have you ever heard Mr. Sessions or anyone else in the U.S. Attorney's Office in Mobile, refer to Mr. Figures as a boy, or a boy?

Mr. **Vulevich**. No, sir; I have not.

Senator **Denton**. Would you be surprised to learn that today, without having made previous reference to it, in all of the allegations, written and otherwise, he accused Mr. Sessions of, on a number of occasions, calling him boy and having asserted that it was made in the presence of some others, two of whom we have received. He also accused Mr. E.T. Rolison, Jr., and Mr. Faure, now deceased, of calling him boy. We have received today, an affidavit from Mr. E.T. Rolison, Jr., denying that he ever referred to him in a derogatory manner as a boy. We also have one from Ginny S. Granade, who Mr. Figures testified was within hearing when he was called boy by Mr. Sessions. And she says, "I have never heard Mr. Sessions refer to Mr. Figures as boy or to call him by anything other than his given name."

I thought that I heard you, Mr. Figures, mention Mr. Vulevich's name as a source of that epilation. Is that correct?

Mr. FIGURES. Senator, my recollection of my testimony is that at the time that Mr. Sessions called me boy, he was standing in the doorway of Ms. Granade and that Ms. Granade and Mr. Rolison were in the office. That was in response to a question as to who would have witnessed this statement.

I said that at that time and I stand by it, Senator. You next asked me, subsequently asked me, who else called me boy in that office?

And my recollection of my testimony is that Mr. Faure and Mr. Vulevich called me boy, and I stand by that testimony.

Mr. VULEVICH. Sir, I would love right now to categorically and emphatically deny that. I did not make any such reference to this man.

Senator DENTON. Mr. Vulevich, yesterday Mr. Kimbrough in answer to a question from me, and I will rely on whatever the transcript said, but I asked him something to the effect, if Mr. Figures might be considered exceptionally racially sensitive, might have been or had some tendency to be overly touchy about that?

And his response was generally affirmative, but I will defer to Senator Heflin's memory or Senator East. The only reason I mention that is I would like to ask you about that, whether having served under a number of administrations, you would characterize Mr. Figures in any particular way, as to his personality or to his ability to work with others, any special moodiness that might affect his judgment or perhaps, even his job performance, anything in that order, because his allegations are extremely material to the judgment of Mr. Sessions' reputation and deportment.

Mr. VULEVICH. In my opinion, sir, he is racially sensitive. He carries his feelings on his sleeve from what I observed in the office. He did have considerable difficulty dealing with some investigative agents or agencies. For what reasons are best known to him. I would say that he is a pretty good lawyer with a pretty bad attitude problem. And that is the way he generally came across. His legal ability I have no question with, but his attitude, in my opinion, was his main problem, getting along with people.

Senator DENTON. Were there any occasions with some adverse development from his point of view, such as a Supreme Court ruling of the day, or some development in the newspapers reflecting Justice Department matters or any other thing that might have touched him off? Did he ever become secretive or show that he had perhaps more suspicion than need be or any tendency toward a persecution complex?

Mr. VULEVICH. He was very much to himself. I would say that maybe and I think that he had somewhat of a persecution complex. I might best describe it as the man in a football stadium with 80,000 people but he thinks that when the team huddles, they are all talking about him.

And in general that was my impression of his complex.

Senator DENTON. Are you aware of a statement attributed to Mr. Sessions, by Mr. Figures, to the effect that Mr. Sessions wished that he could decline all civil rights cases?

Mr. VULEVICH. No, sir; I am not.

Senator DENTON. Is there anything in Mr. Sessions' performance that would lead you to believe that such an allegation was true?

Mr. VULEVICH. Not at all, Senator. Mr. Sessions is an aggressive prosecutor and lives up to the oath that he took in the performance of his job as such.

Senator DENTON. Having served there for the number of administrations that you did, and having your association with Mr. Figures, over a period of time, how would you have expected him to react if you had called him boy?

Mr. VULEVICH. Well, I tried to get to know Thomas Figures quite well when he first came there. I would not have called him boy, for the obvious reason that I know black people do not like to be called boy. The history behind it is such that it would be derogatory.

I would imagine that he would have shown me that he was bigger than I was in size, had I called him by that name.

Senator DENTON. Do you have anything else that you would care to offer?

Maybe any opinion as to whether Mr. Figures is entirely objective within the testimony, the nature of the testimony he has offered against the nomination and confirmation of Mr. Sessions?

Mr. VULEVICH. Only to say, sir, of course I did not come up here to try to do in Mr. Figures. I did come up here to try my best to see that Mr. Sessions was not done in and I do not think that Mr. Figures' observations are totally objective. To my knowledge, Mr. Sessions put him in charge of civil rights actions, had confidence in him, worked with him, worked with local authorities, and I do not know why he feels like he does, obviously I do not.

I do know Mr. Sessions has not conducted himself in the manner described. That he has done nothing but conduct himself in the manner in which he should and which he is sworn to do.

Senator DENTON. Did you ever hear any reference to the now-famous Klan joke, and what do you know of the circumstances or nature of that event?

Mr. VULEVICH. If that is the thing I read in the paper about supposedly a statement attributed to Mr. Sessions about liking the Klan or not disliking them–I never heard him make any such statement. He prosecuted one of the chiefs of the Klan in Mobile. I know he has no use for them whatsoever.

Senator DENTON. Thank you, Mr. Vulevich.

Senator Helfin.

Senator HEFLIN. I did not understand exactly. You say that you have been an assistant U.S. attorney since 1961?

Mr. VULEVICH. 1969.

Senator **Heflin**. And I understand you that you came on your own after reading in the paper that you thought that Mr. Sessions was getting a bum rap and so you paid for your own air ticket to come up here?

Mr. **Vulevich**. Yes, sir.

Senator **Heflin**. And you have come on your own, relative to defending Mr. Sessions?

Mr. **Vulevich**. Yes, sir.

Senator **Heflin**. That is all.

Senator **Denton**. Senator East.

Senator **East**. I have nothing.

Senator **Denton**. On balance, I think, Mr. Figures, I should offer you an opportunity to say anything you wish regarding Mr. Vulevich's testimony.

Mr. **Figures**. Senator, the only thing that I can say is that I stand by my statements contained in my formal statement and I stand by my testimony earlier given.

Senator **Denton**. All right, thank you both, very much.

You are excused.

[The witnesses are excused.]

Senator **Denton**. I have now to make a decision about the next panel which was the favorable panel, which was to have balanced the day. It is late, they cannot stay for tomorrow in spite of the fact, that we have lost, of course, all of the electronic media, except one radio that I know of. And we have some tired journalists over there. I have no choice since these witnesses stayed yesterday to ask the last panel to come forward.

Thank you, Mr. Figures, and thank you, Mr. Vulevich.

STATEMENTS OF HON. BRAXTON KITTRELL, JUDGE, 13TH JUDICIAL CIRCUIT, MOBILE, AL; REV. BEN SAWADA, ASHLAND PLACE UNITED METHODIST CHURCH, MOBILE, AL; GEORGE HORN, MOBILE COUNTY REPUBLICAN EXECUTIVE COMMITTEE, MOBILE, AL; AND BOBBY EDDY, CHIEF INVESTIGATOR, DISTRICT ATTORNEY'S OFFICE, MOBILE, AL

Senator **Denton**. Judge Braxton Kittrell will be first because he has a flight. Next will be Bobby Eddy.

This panel is the Honorable Braxton Kittrell, Judge, 13th Judicial Circuit, Mobile, AL; Rev. Ben Sawada, Ashland Place, United Methodist Church, Mobile, AL; George Horn, Mobile County Republican Executive Committee, Mobile, AL; and Bobby Eddy, chief investigator, district attorney's office, Mobile, AL.

Please raise your right hands.

Do you swear that the testimony that you will submit in this hearing today will be the truth, the whole truth, and nothing but the truth, so help you God?

[The witnesses answered in the affirmative.]

Senator **Denton**. Please be seated gentlemen.

And we will take a 3-minute recess.

[Whereupon, a brief recess was taken.]

Senator **Denton**. The hearing will come to order.

Senator Helfin, in view of the time constraints, Judge Kittrell and Mr. Bobby Eddy would like simply to submit oral statements, and not be subject to questions.

Judge Kittrell, will you go first?

Judge KITTRELL. Mr. Chairman, and Senator Heflin, I appreciate the opportunity to be here today. I am on a tight schedule and I am going to abbreviate my remarks. I just want to say that I have known Jeff Sessions for a number of years and he is a person of the highest character and integrity. I have never known him to make racial slurs or remarks, nor has any attorney or anyone else for that matter, ever reported to me that he has ever made such remarks other than what I have heard coming out of these proceedings.

Judge Sessions is not a racist. If I thought that he was I would not be here today supporting his nomination. Jeff Sessions is not insensitive to blacks. If he, in fact, had made the remarks which have been attributed to him, I am satisfied that they have been taken out of context, as Jeff Sessions is not that kind of person. He has an excellent reputation and I urge you to confirm his nomination.

Senator DENTON. Thank you very much, Judge Kittrell, I know that you have to run.

We will have questions for you for the record, and we can answer them that way, at your leisure.

Mr. Bobby Eddy, I know that you are in a hurry too, sir, so please go ahead.

Mr. EDDY. Mr. Chairman, and Senator Heflin, I am Bob Eddy and I am the chief investigator for the district attorney's office in Mobile County, in Mobile, AL. I am here at the request of Senator Denton's office to testify before this committee. I have been in law enforcement for 19 years. I have investigated several cases in my career, including several civil rights cases; this includes the Klan bombing at the 16th Street Baptist Church in Birmingham, AL in 1963. And the bombing conviction of J.B. Stoner, an avowed racist, for bombing a black church in Birmingham in 1958.

I came to know Mr. Jeff Sessions during my involvement with the Michael Donald case and this was a crime committed by Tiger Knowles and Henry Hayes, members of the Klu Klux Klan in Mobile, AL. They took Michael Donald and later hung him from a tree across from Henry Hayes' apartment. Tiger Knowles became a Government witness and pled guilty to a civil rights charge and is now serving life in a Federal prison.

Henry Hayes was tried and convicted of capital murder by the district attorney's office in Mobile and sentenced to die in the electric chair by Judge Braxton Kittrell who is now on this panel. Mr. Sessions cooperated and made available the total resources of his office as did Moss Stack, the agent in charge of the FBI in Mobile, to help the State come to its successful conclusion in this case.

Mr. Sessions expressed on several occasions his desire to see this case come to a successful conclusion and to include everyone possible involved in a conspiracy to kill Michael Donald.

Mr. Sessions was concerned that the investigators proceed against any member of the Klan, or others outside of the Klan who had knowledge or who had helped in any manner. On one occasion, in his office, Mr. Sessions expressed his frustrations to me at the lack of evidence against others involved in this conspiracy, and wondered aloud if there was anything that we had missed, or anything still to be done.

He was not complaining of the lack of talented investigators, he thought that others knew more than they were telling.

This crime shocked him as it shocked the community. Many felt that we were not doing our best to solve this case. The end results proved otherwise.

Mr. Sessions expressed his concern to Mr. Galanos and me on more than one occasion, that others involved should not be given any immunity for testifying, that we worked to prove our case, charging as many as we possibly could. His desire, as well as Mr. Galanos' was to see them vigorously prosecuted.

Without his cooperation, the State could not have proceeded against Henry Hayes on a capital murder charge. I have worked with white collar crime and political corruption cases with Mr. Sessions also, and all have been successful.

Never have I heard Mr. Sessions make a racial slur or found him to be racially biased or insensitive. I was shocked, as many in Mobile are, to read in the media of those accusations. His record as U.S. attorney proves otherwise.

Thank you.

Senator **Denton**. My original information was apparently incorrect. I think you two gentlemen can depart as late as a quarter to six, to make the airport. Is that correct?

Would the other two witnesses mind if I asked some questions? Do you have to make a plane quicker than that, sir?

Judge **Kittrell**. No, sir.

Senator **Denton**. Let me ask Judge Kittrell, then, as a Circuit Judge, you meet the lawyers of Mobile on a regular basis. Could you give your estimate of how they view Mr. Sessions?

Judge **Kittrell**. I think that they view Mr. Sessions as a courageous prosecutor and a very intelligent attorney, and I think they hold him in the highest regard.

Senator **Denton**. Do you know of any action taken by Mr. Sessions that you thought was motivated by racial prejudice?

Judge **Kittrell**. Absolutely not.

Senator **Denton**. Have you ever heard him say or make any racially derogatory remark?

Judge **Kittrell**. I have not.

Senator **Denton**. He has led his office through a series of extremely intense and highly publicized prosecutions, very successfully in most cases, and at some risk, according to Mr. Kimbroush, who advised him not to take on the *Perry County* case, because of the political risk even though there was no doubt about the need to take it on.

Could you tell us your estimate of how he has conducted himself under this intense pressure?

Judge **Kittrell**. Senator, of course, Mr. Sessions has been in the Federal court and I have been in the State court, but what I have seen of Mr. Sessions and what I know of him, he has always conducted himself in the highest manner and he has always been able to handle the pressure and prosecute those cases with great vigor.

Senator DENTON. Who is Judge Robert Hodnette?

Judge KITTRELL. Judge Hodnette was our presiding Judge, who immediately preceded Judge McRae, who testified yesterday.

Senator DENTON. Has Judge Hodnette worked closely with Mr. Sessions?

Judge KITTRELL. He did, particularly, during the the prosecution of two judges in our city, and as a matter of fact, Judge Hodnette asked me to convey to this committee, if I had the opportunity, his desire to appear here, before it, but he could not do so because of health reasons.

Judge Hodnette holds Mr. Sessions in the highest regard, he worked rather very closely with him during those prosecutions and is very familiar with Mr. Sessions and Judge Hodnette is satisfied that Mr. Sessions is not insensitive to blacks.

Senator DENTON. Do you think that Mr. Sessions has the proper judicial temperament to qualify him to serve as a Federal Judge?

Judge KITTRELL. I think that Mr. Sessions has the skill, the experience, and the temperament which are necessary and important qualities in a judge.

Senator DENTON. Judge, how would you characterize yourself, as principally a democrat or a republican?

Judge KITTRELL. I am a democrat.

Senator DENTON. We had Mr. Kimbroush who called himself a yellow-dog democrat yesterday, would you characterize yourself that way?

Judge KITTRELL. I do not believe that I would characterize myself as a yellow-dog democrat; I am a democrat.

Senator DENTON. Mr. Eddy, where do you live?

Mr. EDDY. Mobile, AL.

Senator DENTON. How long have you lived there, sir?

Mr. EDDY. Six years.

Senator DENTON. What is your occupation?

Mr. EDDY. Chief investigator, district attorney's office.

Senator DENTON. Where else have you lived during your professional career?

Mr. EDDY. Huntsville, AL; Montgomery, AL; small towns outside of Montgomery.

Senator DENTON. If you do not mind my asking, what is your political party affiliation?

Mr. EDDY. I am a democrat.

Senator DENTON. Have you ever held a party or elected public office?

Mr. EDDY. Yes.

Senator DENTON. You worked on the staff of the Alabama's Attorney General, is that correct?

Mr. EDDY. Yes, I did.

Senator DENTON. Was he a Democrat?

Mr. EDDY. Yes, sir, he was.

Senator DENTON. Were you involved in any civil rights cases, in that position?

Mr. EDDY. Yes, sir. Under Bill Baxley, the attorney general at that time, I worked the 16th Street church bombing, which killed four young girls, and the J.B. Stoner bombing which was in 1958, a church bombing also where no one was killed.

Senator **Denton**. Could you tell us your involvement in those cases and the results of those cases?

Mr. **Eddy**. I was assigned to those cases in 1976, by Attorney General Bill Baxley, and worked with the FBI and other officers in bringing those to a successful conclusion. In the conviction of Robert Chambliss in the bombing that killed four girls and the conviction of J.B. Stoner.

Senator **Denton**. Recognizing your modesty, would it be fair to say that you are credited, publicly credited with having broken open that case?

Mr. **Eddy**. Yes, sir.

Senator **Denton**. What was the result of the prosecution?

Mr. **Eddy**. They were both convicted.

Senator **Denton**. Do you know the nominee, Mr. Jeff Sessions?

Mr. **Eddy**. Yes, I do.

I became acquainted with him during the *Michael Donald* case, which I think is about 3½ years ago.

Senator **Denton**. And over what period of time, did you work closely with Mr. Sessions?

Mr. **Eddy**. From that time on, I have worked, not only that case, but other cases out of his office, or that were handled out of his office. I worked with his investigators and with him.

Senator **Denton**. Would you refresh the committee on your recollection of the facts in that case, considering there have been much reflecting on Mr. Sessions' eagerness to prosecute the case.

Mr. **Eddy**. You are talking about Michael Donald?

Senator **Denton**. Yes, sir.

Mr. **Eddy**. As I remember, the first time I talked to Mr. Sessions about it was at the YMCA and he just stopped me one day and asked me to reflect on the case. The case had been investigated by the Mobile Police Department. The FBI had gone through one investigation on it, or a preliminary investigation on it, for a civil rights violation.

He without success, had not come to any conclusion or any suspects at that particular time. He asked me to reflect on it at that time and what I felt about it and how I felt it should be proceeding.

Shortly after that time, Mr. Galanos asked me to review the FBI records and also to review what had been done in *Michael Donald* case by the Mobile Police Department and make a suggestion as to which way, if I were conducting the investigation, I would conduct it. I did so. Some time after that, I do not know, weeks or days later, I just really do not remember, I understand that Mr. Galanos and Mr. Sessions had got together and discussed one of the recommendations that I had of using the grand jury to do the investigation, whether to use State or Federal grand jury.

And evidently they decided to use the Federal grand jury and proceed with trying to gather more evidence, or trying to get the evidence.

And it was from that point on that I was closely associated with Mr. Sessions and what happened during the case. He was constantly interested in the case, and each time he saw me, he asked my opinions on certain things, or witnesses or what I felt about certain things, and it was always in a positive manner.

He was vigorously pursuing that case, from all indications that I could see and all of the conversations that I had with him. He wanted to get that case solved and to include as many defendants that we could prove had anything to do with that homicide.

Senator **DENTON**. What was the disposition of defendant Tiger Knowles?

Mr. **EDDY**. Tiger Knowles pled guilty on a civil rights violation and received a life sentence in Federal prison.

Senator **DENTON**. How about Henry Hayes?

Mr. **EDDY**. Henry Hayes was tried in State court by Mr. Galanos' office, and found guilty and was sentenced to die in the electric chair by Judge Kittrell [phonetic].

Senator **DENTON**. In the event that the State prosecution of Hayes had not been successful, do you believe that Mr. Sessions would have gone forward with the Federal prosecution?

Mr. **EDDY**. Very definitely.

Senator **DENTON**. Do you have any reason to believe that Mr. Sessions is racially biased or prejudiced?

Mr. **EDDY**. No, I do not.

None whatsoever.

Senator **DENTON**. Or racially insensitive?

Mr. **EDDY**. None whatsoever.

Senator **DENTON**. Do you think that he is temperamentally qualified to be a Federal judge?

Mr. **EDDY**. Yes, I do.

Senator **DENTON**. Thank you very much, both of you gentlemen.

Oh, goodness gracious. I am sorry, Senator Heflin, I am getting tired up here.

Senator **HEFLIN**. I do not believe that I have any questions.

Senator **DENTON**. Senator East.

Senator **EAST**. No, thank you.

Senator **DENTON**. You two gentlemen may be excused, and thank you very much.

Mr. **EDDY**. Thank you.

Judge **KITTRELL**. Thank you.

[The two witnesses were excused.]

Senator **DENTON**. Mr. George Horn is on the Mobile County Executive Republican Committee, in Mobile, AL.

If you have an opening statement, you may make one, Mr. Horn. I do have questions.

Mr. Horn Senator Denton and Senator Heflin and Senator East, my name is George Horn and I am from Prichard, AL. And I am a retired civil service employee and I am also retired on Social Security with my 62d birthday, and I still practice public accounting, and I am a constable from Alabama 33rd Senatorial District and 97th representative district in No. 2 spot, as a constable.

That is my opening statement.

Senator **DENTON**. Where were you born?

Mr. **HORN**. I was born in Clarke County, Grove Hill, AL.

Senator **DENTON**. And how long have you lived in the Mobile/Prichard area?

Mr. **HORN**. Approximately 40 years continuously.

Senator **DENTON**. How long have you been a Republican?

Mr. **Horn**. I became interested in the Republican Party in 1940 during the battle of Thomas Dewey and Wendell Wilkie, when I was in high school in Thomasville.

Senator **Denton**. Do you hold, or have you ever held any official position in the Republican Party?

Mr. **Horn**. I have.

Senator **Denton**. What was it or what were they?

Mr. **Horn**. I am a member of the Mobile County Republican Executive Committee, and for two terms and I have been a member of the Alabama State Republican Executive Committee.

Senator **Denton**. Are you familiar with the nominee, Jeff Sessions?

Mr. **Horn**. I am.

Senator **Denton**. How many years have you known him, sir?

Mr. **Horn**. I first met him in 1977.

Senator **Denton**. Have you had frequent contact with him since then?

Mr. **Horn**. Very frequently, especially when he was a member of the Mobile County Republican Executive Committee.

Senator **Denton**. Have you been with him frequently in meetings or conversations of a political of a philosophical nature?

Mr. **Horn**. Three different ways I was with him on the Mobile County Republican Executive Committee quite frequently and several club meetings too, and then I thought enough of him to recommend him to my daughter, since I found out that he was a lawyer, he was so friendly when I first met him, I thought that he was an insurance agent.

I thought he was trying to sell me some insurance until I ran up on him in the courthouse and he asked me about my troubles, and I was trying to find some records, and he said, well, George, I will do it in 3 minutes or so, and he did so. So I recommended him to my daughter because some friends were later going to Belize which used to be old British Honduras, she gave him a vote of appreciation, she told me she was glad to meet a man like him with his character.

Senator **Denton**. Do you have any reason to believe that Mr. Sessions is racially biased or prejudiced?

Mr. **Horn**. None at all. I am very tender in that place and if I ever suspected that, I would have stood off from him.

Senator **Denton**. Have you ever heard Jeff make any comments or suggestions that would show racial insensitivity?

Mr. **Horn**. Not in my presence.

Senator **Denton**. From your position as a member of the Republican Executive Committee, could you tell us what your view of the general opinion of Jeff is, particularly in the black community?

Mr. **Horn**. Those that know him are respecting him highly. It is the community that is perhaps 60 to 90 percent Democratic but the people that know him are at least 500 people out of about 10,000 or 12,000 are Republicans and they respect him highly.

Senator **Denton**. Well, thank you very much, Mr. Horn, and we appreciate your having stayed over. It was quite a sacrifice and we appreciate it.

Mr. **Horn**. Thank you.

Senator **Denton**. Senator Heflin.

Senator HEFLIN. I do not have any questions other than the fact that Prichard, I believe, has a Republican Mayor too, has it not?

Mr. HORN. Yes, sir.

Senator HEFLIN. You are a Wendell Wilkie Republican?

Mr. HORN. Well, I was a young man when Wendell Wilkie and Thomas Dewey tied up in 1940 and I got interested in the party.

Senator HEFLIN. Well, Mayor Smith is a johnny come lately?

Mr. HORN. Yes, to me.

Senator HEFLIN. All right, I do not have any questions.

Senator DENTON. Senator East?

Senator EAST. Thank you, no.

Senator DENTON. You can be excused if you wish, Mr. Horn, but you may remain if you desire.

Rev. Ben Sawada.

If you care to make an opening statement, sir, you can.

Reverend SAWADA. Thank you, Mr. Chairman, Senator Heflin, Senator East.

I do have a short statement that I would like to make but first I would like to express appreciation for your staying here and listening and allowing me to testify before your committee on behalf of Jeff Sessions.

I do not come as an attorney, nor as an official of any court, nor as a politician. I come merely as a preacher wanting to testify to the integrity and good character of Mr. Sessions as I know him. I would also like to witness to the reputation that Mr. Sessions enjoys in our community. I am Rev. Ben Sawada, senior minister at Ashland Place United Methodist Church in Mobile, AL. This is the church where Mr. Sessions and his family are members and they have been active members for over 10 years. Mr. Sessions, himself, has been a participant or a member of the Methodist Church all of this life.

I met Mr. Sessions for the first time back in 1962 or 1963, when he was participating as a youth in a week-long church sponsored youth program in Montgomery, AL. I was there as a minister serving on the staff. Later I knew of Mr. Sessions' graduation from high school and then enrollment in Huntington College, a Methodist related school. And some time later, it was around 1980, Mr. Sessions invited me to participate in a program for the alumni day program at the Huntington College.

Then the next time our paths crossed was when I was appointed Minister of the Ashland Place Church, where Mr. Sessions was a member. I give all of that information just to let you know that I have known Mr. Sessions over a period of years, but have been most closely associated with him these past 2 years as his minister.

Several months ago, I was interviewed by Federal Bureau Investigator, Edward Kilday and the report that I gave to him there, was, as far as I knew, that there was nothing in Mr. Sessions' character, his activities, his behavior, his habits which would not allow him to serve as an effective, and fair U.S. Federal judge.

I also told the agent that as far as I knew, Mr. Sessions enjoyed a good reputation throughout our community and of course, I am of the same opinion now, as I was back then when interviewed.

Mr. Sessions and his wife have been members of the Ashland Place Church, as I said, for over 10 years, and during that time, Mr. Sessions has been very regular and very active in his participation and attendance at the church and its program.

He has served in various elected positions, been on various boards and committees, and at present, Mr. Sessions is holding the office of Lay Leader. Of course, that is the highest elected position in a local church and it is the one that holds the most respect of the congregational members. This reflects the respect and the trust of the congregation.

So, I would like to say, that I feel that Mr. Sessions is a very honorable man, a man with high standards of morality and a man of veracity and one who deals fairly with people. I have never heard Mr. Sessions make any comments which I think would disqualify him as United States District Judge.

Thank you.

Senator **Denton**. Thank you very much, sir.

How long have you—I wished that I had introduced you properly as a senior minister.

Rev. **Sawada**. That is all right.

Senator **Denton**. How long have you known Mr. Sessions?

Rev. **Sawada**. I first met him in 1962, and have known him since then, but I have been his minister only for the past 2 years, though.

Senator **Denton**. How regularly do you see him in that relationship and talk with him?

Rev. **Sawada**. Well, his being on various committees, and boards, because of his lay leadership now, I see him quite often, officially and unofficially.

Senator **Denton**. To your knowledge and to your hearing, has Mr. Sessions ever said anything derogatory of any race or religion?

Rev. **Sawada**. I have never heard it, sir.

Senator **Denton**. Would you find it easy to believe that he made derogatory statements regarding civil rights groups such as the SCLC or NAACP?

Rev. **Sawada**. I was surprised when I heard it.

Senator **Denton**. Senator Heflin?

Senator **Heflin**. I have no questions.

Senator **Denton**. Senator East?

Senator **East**. I have no questions.

Senator **Denton**. Thank you very much, gentlemen, I appreciate your waiting so long. And I have just been informed that Senator Clarence Mitchell is here.

And he can come forward.

[The witnesses were excused.]

Senator **Denton**. If you will remain standing Senator Mitchell, I will ask you to raise your right hand.

Do you swear that the testimony that you will give this subcommittee today will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Mitchell**. Yes, I do.

Senator **Denton**. Will you please be seated?

Sir, if you have an opening statement, you are free to make it at this time.

STATEMENT OF STATE SENATOR CLARENCE MITCHELL

Mr. **Mitchell**. Senators and Mr. Chairman, I have submitted a written statement which after having served 24 years with the

Maryland Legislature, I recognize to be sufficient for any kind of formal testimony and would be available to answer questions you might have. Say, briefly in terms of the written statement that I have issued did not include a little background of who I am and what I have been about most of my life.

I am the son of Clarence Mitchell, Jr., who for 35 years was the director of the Washington Bureau of the NAACP, and played a major role in shaping the language and the direction of most of the civil rights legislation that has been passed by this honorable body, since 1957.

In my own right, I was active in the youth movement of the NAACP and was one of the founders of the Student Nonviolent Coordinating Committee, worked in the South, in Alabama, Georgia, Mississippi, as well as Maryland, and Maryland can be included in the South, we are below the Mason-Dixon line by geography and we are also at that time and still to some extent below the Mason-Dixon line in philosophy and social practices, as well, which is what has led me to stay in the Maryland Legislature the 24 years that I have stayed there.

I also come as president of the National Black Caucus of State Legislators, an organization of 392 black State legislators in 42 States. I have served as their national president for the last 6 years and was unanimously reelected at our conference by some 200 of our members from all over the country in December to continue to serve as their president.

It is in that capacity that I have come to be involved in the situation in Alabama, and it is in that capacity that I come before this committee to hopefully persuade the members of this panel that they would do a serious injustice to the cause of progress and human rights, if they approve the nomination of Mr. Sessions.

Having said that, Mr. Chairman, I would welcome any questions that you or any member of the panel have of me.

Senator DENTON. Thank you, Senator Mitchell.

Mr. MITCHELL. Yes, sir.

Senator DENTON. In your written testimony, you refer to having had a May 24 meeting last year with Alabama's Gov. George C. Wallace, at which your NBCSL Executive Committee contended that the FBI was trampling the civil rights of its State citizens by using intimidation and harassment to investigate the accusations against Albert and Evelyn Turner and Spencer Hogue.

You go on and say, "We secured the Governor's promise to mobilize the State's investigative forces, should evidence supporting our contention surface at the trial of these Perry County defendants."

I respect Governor Wallace. I like Governor Wallace, and happen to believe that he has sincerely turned around on the civil rights issue. He respects me and he likes me and we are in frequent telephone and personal communication.

I never got a call from him about the *Perry County* case. I wonder what mobilization he undertook or did no evidence surface that you were correct regarding your contention that the FBI was trampling the civil rights, et cetera?

Mr. MITCHELL. Having reviewed the conduct of the hearings that were held relative to Evelyn Turner, Albert Turner, and Spencer

Hogue, it was obvious that there were many instances of the Federal Department of Justice having trampled on the rights of black citizens in the State of Alabama.

We have not had a response from the Governor as to whether or not the State intends to move forward on the commitment that he made, not just to me, but black members of the Alabama State Legislature, both Senate and House, as well as black members of State legislatures from other States, who were meeting there.

My argument to the Governor, in requesting that he make such an investigation, should the evidence warrant it, was based on the fact that the Governor of any State, has a responsibility to protect the citizens of their State, his or her State from any unwarranted intrusion or violation of their rights—be it from the Federal Government or be it from outside forces or private forces within the community.

Having been to Alabama on many occasions during the period from March through until now, having talked with many of the citizens who felt abused by the conduct of the Department of Justice, in this case, there is no other conclusion that a reasonable person could come to.

Senator DENTON. My question was not in reference to your view, it was to the view of Governor Wallace. You have made your views clear, indeed, you have made your views as quoted by the Birmingham News, Tuesday, June 25, 1985, opening paragraph of an article headlined, "Vote Fraud Case is Political Ploy Black Leader Says," "Probe used as tool to get Denton reelected, Clarence Mitchell says." It is by John Brinkley, Post Herald Washington Bureau, Washington.

> The Justice Department is pursuing the black belt vote fraud case as a part of the Reagan Administration ploy to help Senator Jeremiah Denton get reelected President of the National Black Caucus of State Legislators charged yesterday.
>
> The Administration is conducting this investigation as a political tool for Senator Jeremiah Denton, said Clarence Mitchell, who is also a Maryland State Senator.
>
> He said, the FBI, in investigating the case, used intimidation tactics designed to discourage blacks from voting in future elections.
>
> Denton, a Republican, is up for reelection next year.

Mr. Mitchell, I categorically deny now, as I have on past occasions, the allegation that the President, Mr. Meese, or myself, had anything to do with using that investigation as a political tool. I was not aware of that investigation until I read about it in the paper. Your allegations, I consider, serious in a personal, legal, and professional sense.

What did you base your charge on, that I or the administration is conducting the investigation as a political tool for me?

Mr. MITCHELL. First, Senator, I assume that you have had, in your period of public service, contact with newspapers as well. There was one word left out and that was appear. And certainly the appearance based on the circumstantial evidence led me to believe, having had experience with the conduct of some forces in the present administration of the Justice Department, given the quotes of the Attorney General of the United States as to not believing in the presumption of innocence, a tenet that is the foundation of our system of justice in this country, given the fact that only black activists and black absentee voters were the victims of the harassment of the U.S. attorney's office and then, further, given the fact that the reward for the U.S. attorney who has conducted himself in this fashion is, that his U.S. Senator recommends him for appointment to the Federal judiciary, certainly presents circumstances that lead one to question as to whether the activity that has been going on in Alabama, is politically motivated.

Senator **Denton**. Well, I certainly do not agree with that relation of the circumstances. First, the investigation into the *Perry County* case appears to have been late. There are reasons to believe that it probably should have begun back in 1982. There have been a string of Justice Department civil rights people here apparently with whom we disagree, but many who were with the Justice Department long before President Reagan was the Chief Executive, who share that, in fact, instilled that view in me, by their expert testimony as to why it was justified.

A young black man, a legal assistant to the district attorney in Marion, LaVon Phillips, gave testimony yesterday in which he characterized the situation there as one indeed, involving intimidation of black voters. One which those black voters complained about and it was a Democratic primary difficult to see, in your mind how the circumstances in the Democratic primary would be used by me to thrust myself in it, to intimidate black voters but at any rate, the case was realized, was justified, and it was undertaken and the situation characterizing the political situation there, by Mr. Phillips was one, which I believed.

And I do not want to be elected by intimidated votes, but for your information, all the polls I am aware of in the State, show me with 40 percent of the black vote support, which is higher than that of my Democratic opponent.

So it would be insane, I think you would realize as a politician, for me to want to intimidate voters away from voting for me.

Would you answer that question?

Mr. **Mitchell**. I am happy to hear that, Senator, and I am happy to hear, honorable sir, you categorically deny that you would participate in the intimidation of black voters in your State. That certainly is refreshing and would give indication of the fact that these persons whom I have talked to who have fears really do not have reason to be fearful at all, because you apparently are indicating that you are going to be in the forefront of protecting their right to participate in the process by FBI agents flashing badges in their faces, odd hours of carrying them on buses to Mobile, AL, many of the folks who had never been outside of their county, that certainly is refreshing and I am happy to hear that.

Senator **Denton**. The allegations that you just made about conditions on the bus ride and so on have been refuted by the testimony of many people here and by affidavit. I would charge you with sensationalizing and distorting but this is not the time or place for that.

Mr. **Mitchell**. If I might say, Mr. Chairman, there is one aspect of my public service that I intended to mention and that I have not mentioned, and that is, for the last 4 years, I have chaired the Executive Nominations Committee of the Maryland Senate. This is the committee that is charged with the responsibility of confirming judicial appointments of the Governor, from the district court level all the way to the court of appeals level, which is our highest court in Maryland. So, I have had some experience in weighing the factors that ought to be present in confirming persons who seek service in the judiciary in our State. And having had the opportunity to have that experience, and then having looked at the record of the present proposed appointee, I would certainly again, very strongly suggest that this is not the kind of person that ought to be serving the people of this country at the level of the Federal judiciary.

Senator **Denton**. Let me respond to that, sir.

We have the testimony of black attorneys, we have the testimony of Larry Thompson, King & Spauling Atlanta, GA, who is former U.S. attorney who has had a good bit more experience, perhaps than you, in civil rights cases. We have people who have lived in Perry County who are not characterizing the situation in the manner you are and they have had plenty of experience with it too. And if there is voter fraud going on, I suggest you look at the possibility that it might have been on the other side of the fence, because all of these people have asserted that if there was any, that is where it was coming from and the prosecution failed, probably because Mr. Sessions was a little overloaded and was not able to attend the case, personally.

So, I hope that you will take a more lenient view of what is going on in Alabama. We have more elected officials, black in Alabama, than any other State in the Union minus one. We have more black mayors in Alabama than any other State in the Union, bar none. That is not per capita, that is total.

I happen to know everyone of the black mayors in Alabama, I am on friendly terms with them all. I think that although they might not vote for me, they certainly trust me and they like me and they have had me speak to them on a number of occasions and I like them. I know that there will be Democratic and Republican all the time and I hope that we get a two-party system in the South, and the black mayors of Alabama gave me their State award 2 years ago.

So, I am not exactly on bad terms with them and I resent your taking umbrage and making your construction of circumstantial evidence in the manner which you did.

Have you ever brought to the attention of the Justice Department or to any U.S. attorney, any evidence or allegations of voter fraud in Alabama, and if so, what was the disposition thereof?

Mr. **Mitchell**. I supported the Alabama Legislative Black Caucus as well as Senator Sanders and the other civil rights activists, voter rights activists and leadership in Alabama in their efforts to get redress of the conduct, particularly in, as I remember, three counties where the population which was majority black and there are no black elected officials.

Again, circumstances that certainly ought to be worthy of inquiry on the part of any U.S. attorney who is committed to assuring equal access to political participation by all the citizens of his area.

Senator **Denton**. You did not personally bring any official complaint to a U.S. attorney or to the Justice Department or the FBI on any of these instances?

Mr. **Mitchell.** No, sir, I did not. In fact, when I became involved—you know one of the strategies of those who would oppose the forward progress of black Americans, and I say, one of the strategies, because I have been in situations when I was working with the SNCC organization where I was facing the shotgun of a racist white sheriff who was determined to prevent us from registering blacks who sought to participate in the process during that period.

But for the fact that that particular sheriff had control of the trigger finger, I might not be sitting here before you today. There are probably some people who are wishing that had occurred as well.

So, I have seen that kind of attempt to prevent the progress of the black community. And now I am seeing a different kind of strategy. I am seeing a strategy that is being utilized by those who would defeat right thinking people of all hues and colors, and that is, the utilization of the very laws that were passed to protect them to try to defeat them.

I suggest to you that we will be as vigilant as the founders of this country were in preserving the progress that we have made and continuing to build on it. I come from the State of Maryland, where I have consistently supported for U.S. Senate, a member of this committee, Senator Charles Mathias, because he represents the finest qualities that can be found for one who would serve in a body such as this. And I paid no attention to the fact that he happens to be of the Republican party. In spite of the fact, that one of my colleagues in the Senate, a great liberal Democrat, was running against him on one occasion, and I supported Senator Mathias because of what he stood for and not what his party is.

I mention that, to say to you, that whatever perceptions I come up with, are not related particularly to a person's party but to their conduct.

Senator **Denton.** Well, I do not think that my conduct qualifies your inferences.

Mr. **Mitchell.** I was not referring to yours.

Senator **Denton.** Or circumstantial evidence. I do not think that it existed there. You have quoted a statement and I do not know if this was misquoted or not, you said you were misquoted by Mr. John Brinkley, and it should have been appeared.

This is another one that I would like to ask you about. "There is blatant voter fraud going on in white-controlled counties." You did not name the counties, but said, "There is substantial documentation of that and we are developing that."

I have not heard anything about that and to my knowledge and the Governor has not either, but I will let you know that I am interested in voter fraud.

Mr. **Mitchell.** We are still working on that and we will be happy to bring that to your attention as well as the attention of Senator Heflin.

Senator **Denton.** In case, and this will be my last remark before I pass it on to Senator Heflin, there have been a number of voter fraud investigations and trials in Alabama during the term of President Reagan. The 1981 case in Randolph County involved the indictment of 11 people, one of whom was black, and the other 10 being white. Three people, all white, were convicted from the indictment, including the incumbent sheriff, all of those convicted were white. In Bullock County, in 1983 a black city councilman was indicted and pled guilty to a voting rights violation. In Marshall County, in 1984, one person, white, was indicted and convicted of charges similar to the *Perry County* Case.

Senator Heflin.

Senator **Heflin**. I have no questions.

Senator **Denton**. Senator East.

Senator **East**. I have none.

Senator **Denton**. Thank you very much, for your testimony today.

Mr. **Mitchell**. Thank you, Senator.

I would just like to say to the committee that the chilling effect of criminal indictments in this situation and whether you are aware of it or not, it was intended that there would be more than those that were ultimately indicted, is the thing that ought to be of concern who are charged with the responsibility, be we in Federal public office and that day may come for me at some point, or be we in State office. And I would hope that all of us would continue to be in the vanguard of assuring that the tools of the Federal Government are not utilized to frustrate the participation of any persons in the political process.

And that is the reason that I am here.

Senator **Denton**. The Federal Government was there to investigate a case in which blacks complained about votes being stolen or changed, and intimidation. I believe that the case should have been brought and so does the Justice Department, so if there is intimidation against voter fraud, I guess that is OK. But I do not think that anybody wants to intimidate on voting.

Senator Heflin, do you have anything else?

Senator **Heflin**. No.

Senator **Denton**. If you wish to remain, Mr. LaVon Phillips would like to come back to the table.

He has a different perspective on the Perry County situation, that might help for you to hear.

Mr. Phillips, you have been sworn in so that you may be seated. You have just heard—did you hear most of the testimony from State Senator Clarence Mitchell of Maryland?

Mr. **Phillips**. Yes, sir, most of it.

Senator **Denton**. And did you hear most of that from Mr. Sanders, Reverend Dobynes, as well?

Mr. **Phillips**. Yes, sir.

Senator **Denton**. I will bring your attention to some of the points that were made by them, starting with Senator Mitchell, the trampling on the rights of black citizens by FBI and the Justice Department.

Since you were there, could you comment on that charge and the charge that the indictments were intended to intimidate blacks from voting?

Mr. **Phillips**. Sir, basically the initial leg work in the investigation, the ballots that were changed, we went to visit each and every—I did not personally, but I went to visit some of them along with an FBI agent, and knocked on the person's door and through a procedure, if you are on law enforcement, the first thing that you do is one, identify yourself. And once that agent and myself have identified ourselves, then you proceed to get to the basis of the questions that you want to ask. And those who wanted to answer questions, we listened. The FBI uses a form, I believe, called 302, and we did not use any undue influence or use any tactic that would constitute trickery to get someone to cooperate with us.

I instructed the FBI agents that if an elderly black person, whoever, it may be, white or black, if they did not want to testify, do not push the issue, leave it alone. There were times that I was with one or two FBI agents, one I can recall, I just cannot remember his name, ycu know, that was rather aggressive, I would say, but I told the agent, I said, the person did not want to cooperate, just let it be because it is very important and as you know, on the rules of evidence, the fourth amendment, a seizure, any time you use undue influence on anybody to obtain any means of evidence, you cannot use it.

So the best way to go about it is the right way. They either cooperate, or if they do not want to cooperate, fine.

And let it be. And that was my whole principle behind the situation. But no, there was no intimidation whatsoever.

Now, in your rural communities, where you have elderly black citizens, normally, as you well know, the only person that they—if someone comes up to their front yard in a suit, and tie, they either are a bill collector or an insurance agent. And of course, a lot of people would be uncomfortable but we did the best that we could to remedy this situation and make those people feel that we were not there to intimidate them. Being black in the district attorney's office, I have an interest to see thta that my reputation is in line, that my morals are in line, that my veracity, my character does not be ruined. And the only way that you can do that is to be nice to people and we were very nice to people. We did not intimidate anybody.

Senator **Denton**. Were you aware of Senator, State Senator Mitchell's involvement at all?

Mr. **Phillips**. I was out of town at the time, I believe Mr. Mitchell came to Marion with—I think it was in April or May of last year. He was in Marion and Selma, I think he was on the steps of the Perry County Courthouse.

Senator **Denton**. Well, you gave an eloquent and I believe extremely credible version of your perspective on the voting situation in Perry County, the political situation in Perry County. We have heard witnesses refer to the black side and the Hayden side? How did you characterize it?

The ones who were already incumbents were concerned about something, would you express your definition of those two sides, and then identify where you see Senator Mitchell, which side was he on?

Mr. **Phillips**. Well, getting to the basis of the situation, the political atmosphere in Perry County, as I stated prior, is not only a white and black power struggle, as far as political ideas are concerned. There is a black on a black power struggle. As I stated yesterday that as the black population in your rural counties become more and more educated in their ideas, and diversified in their ideas, basically, you know, obviously, it is hard to control independent people. So, with some politics or diversity in thinking when it comes to politics, if you are educated, you can think for yourself, in my opinion. If you are not educated you are subject to be condemned and only be told what should be told, in my opinion.

Perry County still has a high illiteracy rate among its black citizens. There was a firm that was in Perry County in 1980 that took a survey and only in 1980, this survey stipulated that only 34.6 percent of all Perry County black residents completed the 12th grade. Less than 6 percent went on to college. And only 3 percent of those blacks that went on to college, actually graduated. Those figures are startling. But that is increasing year by year.

As far as Mr. Mitchell, I do not know him personally, I was born and reared in Cleveland, OH, and I have been reading about him in high school and college, but obviously to me, it was that he was with the Albert Turner Spencer Hogue and Evelyn Turner. He is not trying to hide that obviously, but that is just the way it is. I am quite sure that he has some interest, you know, and I am not going to knock what he believes in.

Senator DENTON. You said there were some blacks though, who were worried about the former civil rights leaders?

Mr. PHILLIPS. Oh, yes, sir.

Senator DENTON. Would you go into that for just a moment?

Mr. PHILLIPS. My office received some complaints, from Col. Warren P. Knyard, retired, U.S. Army who is the incumbent elected tax assessor. And Mr. Reese Billingslea, who is the incumbent elected county commissioner in Place I, in Perry County, taken my—and this is what my whole rationale is about—Reese Billingslea is serving his third term as county commissioner in Perry County. His first term, Albert Turner supported him. In the second term, when it came around, Albert thought that his ideas and his political practices did not dictate that of his organization. And so from there, all hell broke loose. You know, you are not doing what I am telling you to do and you do not believe in what I believe in, so therefore, it creates problems. And you know, this is what you have. Andrew Hayton in Union Town, there has been a big conflict between Albert and Andrew Hayden. Andrew Hayden is the black mayor of Union Town who was also a candidate against Hank Sanders for the State senate this year. And that in and of itself, is creating problems as of now.

You have two different political idealists who believe in two different, who have two different political—I will not say, backgrounds, but you know there is a difference in their constituency in my opinion.

Senator DENTON. Well, you also stated that I was correct generally and I assume that Mr. Mitchell can hear this because you are not from Alabama, he has been down there for some years now that the civil rights movement including NAACP had a very difficult and just road which they traveled, during the 1960's. My best friend in Virginia is V. Dabney who was in the civil rights movement in the 1930's. My other best friend in Virginia, just deceased, was also in the civil rights movement at that time. I happened to get those friends in the Navy but I have been known in my schoolyard in Mobile, AL, to get in a fight when I was in the seventh grade because some of the boys were throwing rocks at the black maids walking home in their white uniforms.

And it was a tough fight, I mean one which involved picking up a board and challenging a bigger guy because the board had a nail in it and it involved more than one guy on each side.

So, I am with all of that. What that man has told me, what I believe to be true, before he spoke and that is, it is time to recognize the fact that many blacks down there, although aware that more progress needs to be made, are aware that progress has been made and they want to shift from the political rabbit activist activity to some kind of economic improvement getting rid of the illiteracy and going on with the rise of the South which is coming about because of the rate at which blacks have come into the opportunity for the production of goods and services, through education and equal opportunity for jobs.

Maybe not equal. So I just wish you guys could cool it a little bit, frankly and give it a little room. Give the South a little room to show from its whites some of the hospitality which they really have, having been kicked properly in the 1960's. I say that not because it has anything to do with this hearing, but because it has to do with a more important thing.

Mr. **MITCHELL**. Senator, my commitment comes from experiences and experiences that were told to me. My maternal grandfather came from Carrolton, MI, where as a 10-year-old boy he watched his Aunt Ginney and two cousins lynched. She was the postmistress in Carollton, MI.

Senator **DENTON**. I agree, that is why I said——

Mr. **MITCHELL**. My grandfather shared that story with us and left Mississippi and I can say to you today, that I am proud to go back to Mississippi and to Alabama to see the progress that has been made and I went county by county, I spent time in Alabama during this period, not just on one occasion, but on a number of occasions not with any intention of trying to do damage to any progress, but hopefully with the intention of trying to give support to the progress that has been made. And I will continue to be about that.

Senator **DENTON**. Articles like this and the kind of thing going on in Perry County where the power structure is trying to perpetuate itself, I do not think contribute to an acceleration of progress. And the progress has accelerated. I do not want to see it arrested.

Can you say anything Mr. Phillips about the law enforcement people across the street, that Reverend Dobynes referred to? The numbers of them and so on?

Mr. **PHILLIPS**. Well, first of all, speaking about Reverend Dobynes concerning the streets were blocked off and there were law enforcement on every corner, blah, blah, blah.

You know, that is absurd. I have stated my feelings about Reverend Dobynes yesterday and I would be glad to state them again.

Senator **DENTON**. How about with respect to Mr. Sanders' testimony about the people being forced to go to Mobile, the selective prosecution of blacks, do you have any remarks other than the ones that you made yesterday about that?

Mr. **PHILLIPS**. No, sir; I do not agree with that either.

Senator **DENTON**. You do not agree with what Mr. Sanders said about those things?

Mr. **Phillips**. No.

You see, let me say one thing, when you are working in a prosecutorial capacity, and people make legitimate complaints, that the prosecutor, such as my boss. Roy Johnson, such as Jeff Sessions, those complaints are legitimate. Now, if the evidence that you should move forward, you do that. And like I stated yesterday, you just do not compromise your position on politics. Sometimes things have to be done for the good and safety of the community. People may not see the results now, but in the long run, they will put a deterrent to absentee ballot fraud, not only keep the blacks from doing it but to keep the whites from doing it.

I want to say one thing, I admit that in the 1960's, you know, in 1965, I was 6 years old. Not old enough to remember. I cannot compare myself to Senator Mitchell's experience on that, but from what my parents have told me, yes, there was fraud in the white community. But two wrongs do not make a right. So you have to do the best you can and the whites are out there frauding the absentee ballot process, they ought to be prosecuted, and if the blacks are doing it, they should be treated no different than anybody else.

Senator **Denton**. I am sure Senator Heflin and I agree with you and Mr. Siegelman who is my opponent and now trying to run a voter fraud reform program, we have his parallel on the Republican side, Senator Cabaniss trying to do the same thing The more we can make it a free vote, available to everyone without fear, with as much as information about the candidates, the better. That is how you are going to get the best people in office, here and down there.

Senator Heflin.

Senator **Heflin**. I have no questions.

Senator **Denton**. Senator East.

Senator **East**. I have none.

Senator **Denton**. Thank you very much, gentlemen.

This hearing stands adjourned.

[Whereupon, the hearing was adjourned at 6:22 p.m.]

NOMINATION OF JEFFERSON B. SESSIONS III, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

TUESDAY, MAY 6, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:30 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Biden, Denton, East, Kennedy, Heflin, Simon, McConnell, Metzenbaum, Specter, Mathias, and DeConcini.

Staff present: Duke Short, chief investigator; Frank Klonoski, investigator; Joel Lisker, counsel; and Cindy LeBow, minority chief counsel.

OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Senator MATHIAS. The committee will come to order.

This is the fourth hearing on the nomination of Jefferson Sessions to be a U.S. district judge for the southern district of Alabama. The previous hearings were held on the 13th, 19th and 20th days of March. The hearings lasted approximately 18 hours. We heard from 25 witnesses concerning the nominee.

This morning, let me call first on the Senator from Delaware, Mr. Biden.

OPENING STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Senator BIDEN. Thank you, Mr. Chairman. Mr. Chairman, I have a brief opening statement, if I may.

Mr. Chairman, almost 1 year ago, Mr. Sessions was recognized publicly as one of the several persons being considered for appointment to the U.S. District Court for the southern district of Alabama.

Since then, many persons concerned about Mr. Sessions' nomination have raised serious questions relating to his professional experience, competence, and temperament. Included among the issues raised were Mr. Sessions' supervision of the investigation and prosecution of the Perry County voting fraud case and his intemperament and racially insensitive remarks about civil rights organizations and individuals.

These issues have been, in this Senator's opinion, at this point thoroughly explored by this committee. The American Bar Association's standing committee on the Federal judiciary independently assessed Mr. Sessions' qualifications by conducting an in-depth evaluation of his experience, his competence and his temperament.

Despite Mr. Sessions' experience and competence as a litigator, first as assistant U.S. attorney and later as U.S. attorney in Mobile, the ABA gave him their lowest possible approval rating, and a minority of that committee found him unqualified.

Having listened to Mr. Sessions' and Mr. Gerald Hebert's testimony during the entire first confirmation hearing, I concluded that Mr. Sessions would not be approved by this committee. Accordingly, I advised publicly that this nomination should be withdrawn.

My reasons for that conclusion are straightforward. Mr. Sessions admitted that after being asked whether a prominent white civil rights lawyer had been referred to as a disgrace or traitor to his race, he responded "maybe he is."

In addition, two attorneys—one a senior trial lawyer for the Department of Justice in Washington, and the other an assistant U.S. attorney in Mobile—testified that on separate occasions Mr. Sessions had characterized the NAACP, the National Council of Churches, the ACLU, and other organizations as un-American because "they shove civil rights down the throats of people trying to solve problems on their own."

Although such statements may have been in the privacy of his office or to individuals he considered to be friends and colleagues, they nevertheless are inappropriate for someone already holding a position of public trust and seeking a lifetime—I emphasize lifetime—judicial appointment.

Insensitive remarks such as those admitted by Mr. Sessions do great harm to the appearance of fairness and impartiality which are essential to the Federal judiciary.

The impropriety of Mr. Sessions' statements is dramatically evidenced by the forced resignation of Secretary Earl Butz and former Secretary James Watt from Presidents' Cabinets for making comments that I would consider, and I think most other people would consider, even less offensive.

It is important to note that the issues concerning Mr. Sessions' nomination have nothing to do with the State of Alabama or the city of Mobile. The standards by which I judge Mr. Sessions are applicable to all nominees, irrespective of the Federal judicial district from which they are nominated.

My decision to oppose Mr. Sessions' confirmation would be the same regardless of whether or not he were nominated from the district court in Maine or Delaware.

It is also important to note that the issue here, in my view, is not whether or not it has to be proven that Mr. Sessions is a racist. That question can go unspoken to, as far as I am concerned.

Some witnesses, including representatives from the Perry County black community and defense attorneys in the Perry County vote fraud case, have charged Mr. Sessions' office with unethical or, at the very least, unprofessional conduct.

Other witnesses have questioned the adequacy of Mr. Sessions' supervision of the vote case. At the very least, troubling questions have been raised as to whether or not the prosecution of that case should have been approved by the Department of Justice, pursuant to its guidelines for prosecuting vote fraud cases.

For our purposes today, I am prepared to assume that charges of unethical and unprofessional conduct have not been—I emphasize have not been—substantiated. Nevertheless, two things are clear; first, that Albert Turner, the defendant in the absentee ballot case, and the Perry County Civic League have dramatically improved the lives of all Perry County residents during the last quarter of a century and continue to be a vital part of the lifeblood of that community.

Second, based on the testimony of Alabama State senator Hank Sanders, absentee balloting is an essential means for assuring rural, and particularly elderly black voters, an equal opportunity to participate in the electoral process.

For these reasons, the Perry County vote fraud case was a case which neither the Government nor the defendants could afford to lose.

At this point, having testified before this committee for an entire day, I, quite frankly, do not know what further explanation Mr. Sessions can provide for his racially intemperament and insensitive remarks.

Those admissions, made under oath, are now a part of the record and the debate on this nomination. Quite frankly, Mr. Chairman, I do not know what else Mr. Sessions can do to erase that, and unless that can be erased, I cannot possibly support Mr. Sessions' nomination.

Senator MATHIAS. Senator Denton, I understand you have a statement.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Thank you, Mr. Chairman.

Senator Thurmond, the chairman of the Judiciary Committee, was asked by Senator Dole to make a statement on the floor on a pending matter. He will be here in about 15 minutes. I want to thank him for his courtesy in responding to my request to have Mr. Sessions before us again to give Senators an opportunity to look further into his qualifications or lack thereof. I am pleased that some have appeared to avail themselves of this opportunity.

We have an enormously difficult responsibility in judging a nominee's qualifications and his fitness for the bench, but in this case our problems have been compounded by the circulation of inflammatory allegations, including an anonymous and lengthy document circulated the day before the first hearing attacking the nominee with a barrage of allegations which some of us had never heard, and some of those allegations are sticking in spite of having been disproved, even recanted.

Mr. Sessions, in responding under oath to those surprising allegations, was as unprepared as we were to reply to the provocative and virulent charges. In an effort to be responsive, I will agree that he answered questions raised by the minority in a slow and deliberative way, often searching his memory in an effort to recall any possible substantive foundation for the allegation.

I think any of us in that spot would be uncomfortable, were we asked about remarks under oath that we were alleged to have made years ago, trying to think if we could honestly say we did not make the remarks or whether or not they were taken out of context, that sort of thing. Evidently, it caused him the kind of confusion it would have caused me.

I can understand how some of my colleagues might have been predisposed to be against this nomination in its early stages because the press accounts have chronicled essentially only the inflammatory accusations, and we have another major example of that today in the New York Times, which I will refer to later, and not published the refutations, recantations, and denials in more than 18 hours of hearings.

The linchpin of the initial opposition to Sessions is the *Perry County* case, and I will ask my colleagues, even if they are now determinated to vote against Mr. Sessions, to give me a fair opportunity to present information which is true and which might very well change their opinions.

You have mentioned that in Mr. Sporkin's case, although I worked on it a long time, I, in the end, agreed that my opinion of him and his qualifications, based on what I had learned, was wrong. What had been going in simply was not proven. I ask you to give me the same opportunity.

As testimony has clearly shown, that case was a black-on-black situation. The complainants were black. All victims whose ballots were altered were black, and all defendants were black.

As further testimony has shown, and as Department of Justice officials have testified, the facts in that case required prosecution. Moreover, the outrageous allegations about harassment and intimidation of witnesses during the proceedings in the case, which have been heard by the Senators now sitting here—the same Senators did not hear the total disproval of those outrageous allegations.

For example, LaVon Phillips, a 26-year-old black legal assistant to the Perry County district attorney, specifically refuted allegations in testimony concerning the genesis and handling of the Perry County voter fraud case.

He reviewed in detail the 1982 allegations and recommendations by a predominantly black grand jury that the Department of Justice and other U.S. agencies investigate the situation.

He gave specific testimony of how black voters' ballots in the 1984 election were obviously changed against their desires, and how black candidates had brought about the contesting of the election.

LaVon Phillips denied the charges of heavy-handedness by the FBI and prosecutors, and charges of selection prosecution. He also denied specific allegations of harassment and intimidation of witnesses which were sensationally given here, and no denial from LaVon Phillips, a responsible, truthful black man, were heard.

He gave extensive, detailed testimony about the witnesses' bus trip to Mobile, which he was on; LaVon Phillips was on that bus trip. He testified that witnesses were not forced to go; that no one got sick or had a heart attack or stroke, as was alleged.

He testified that witnesses were not photographed, fingerprinted or required to give writing samples, as had been alleged. Phillips testified that it was not the Government, but was, in fact, one of those witnesses who came up here and testified against Sessions who was harassing witnesses on the bus trip.

He noted the black factions in Perry County and the divisiveness between them, calling this a "black-on-black" situation. He referred to abusive language and physical threats he had received himself as a result of his cooperation with other law enforcement officials in the voter fraud investigation and prosecution.

This is a black man trying to serve as an assistant to the District Attorney which is investigating this situation in Perry County who has testified to all this.

During the course of extensive contact with Sessions, Phillips said he had gotten to know Sessions well, had never heard him say anything that would indicate racial insensitivity, and believed that Sessions would make a fair and impartial judge.

That is an understatement of what LaVon Phillips has said about Mr. Sessions.

I have told LaVon Phillips personally, but I wanted to state for the record and for this committee, that I admire and respect him for his courage in coming forward to testify. I hope his veracity and courage will not have been wasted.

The second key person I would like to discuss is the key instigator and witness against Mr. Sessions, who is Thomas Figures, who is also black, a former assistant U.S. attorney who served 4 years under Mr. Sessions—4 years.

All significant allegations by Mr. Figures have been either refuted or denied—all of them. The veracity of Figures' sworn testimony before the committee must be considered in light of his sensational allegation that he was "regularly called boy" by Sessions and others in the U.S. attorney's office.

Now, let me ask you to listen carefully about the way and timing of that allegation—the way it was made and the timing of it.

Despite months of investigation and earlier submission of voluminous allegations against Sessions, including the anonymous documents to which I referred previously, the "boy" issue was not raised by Figures until he appeared right there before us at the hearing at which he first appeared.

He made that allegation then, but in the same day he sheepishly denied—after having said he was regularly called boy, he sheepishly denied having used the word "regularly." We will have Mr. Sessions testify again today about whether he ever called him boy.

We have already had the charge vigorously denied by everyone in the U.S. attorney's office who was accused of making such remarks or allegedly having overheard them. They all swore that they never heard anything like that, and sent affidavits to that effect.

Mr. Sessions again will be given an opportunity to respond to this charge under oath.

I believe everyone here knows how devastating such a charge would be if it were true, and it was picked up upon immediately by many on the Judiciary Committee and by much media. It is, by the degree of its sensationalism, alarming, but is it true?

If you took a poll in Mobile, AL, and asked what would be the probability that a white U.S. attorney would refer regularly to a black assistant attorney as boy, in the sensitive racial environment there, or in Detroit, or in South Boston, or wherever, they would tell you it was ridiculous. It would be an absurd situation, the last thing that would happen. It would be like spitting in someone's face. Of course, it is a terrible allegation, but it is simply untrue.

Assistant U.S. attorney Edward Vulevich, who had been there 17 years under both Republican and Democratic administrations, among those who denied that such a label was ever placed by anyone, including Mr. Sessions, upon Mr. Figures—a 17-year veteran—perhaps pegged Thomas Figures most fairly and most accurately when he called him "a good lawyer with a bad attitude." That is his quote, "a good lawyer with a bad attitude."

Vulevich went on to characterize Mr. Figures as the kind of person who, watching a football game in a stadium with 80,000 people in the stands, would conclude that whenever the players huddle they are talking about him.

Figures, by his own admission, characterized the NAACP as subversive. He acknowledged sending a humorous cartoon to a Department of Justice civil rights attorney, poking fun at a comment about pot-smoking Klansmen. Now, that is Figures.

I would have to say that I find it enormously convenient and somewhat bizarre that Figures could then not find any humor in similar joking comments made about the Klan by others—the same jokes, the same kind of context.

By his actions, Figures has demonstrated that people sometimes make comments not intended to convey their literal meaning. Furthermore, according to an article in the Mobile Register dated May 1, 1986, which I have distributed to my colleagues, Thomas Figures, the man we are talking about, who testified on March 20 against the Sessions nomination, had been hired on the previous day, the day before he testified here, to defend in Perry County, AL, a disputed election plan.

This plan, in part, was drawn up by Albert Turner, who was referred to a moment ago by Senator Biden, who unfortunately appears to have departed. This plan was drawn up by Albert Turner, one of the three Perry County activists who claimed they were prosecuted in the *Perry County* case for racial reasons. When Figures testified, he failed to disclose his personal and financial interest in the Perry County issue.

Now, as to this election plan which Mr. Figures testified in favor of, many have called it the most convoluted, gerrymandering plan ever submitted in the history of the United States. It circles a house, for example, and then goes and gets other places in town.

The district court ruled against the Turner plan and the Perry County Commission in this case. The judge told Figures that the way the at-large districts were drawn apparently was motivated by a desire to dictate who is going to be elected and who is not going to be elected.

I want my colleagues, I beg my colleagues, to stop and think about this whole situation for a minute. The principal informant on Mr. Sessions is a man with a personal, financial, and political involvement in the entire Perry County matter.

The involvement includes, as we know now, direct relationships with the Perry County defendants and others, many of whom have been witnesses against this nominee. Mr. Figures' testimony, if there is any lingering doubt about its credibility, can now no longer be considered objective. It can only, at best, be considered tainted and prejudiced.

Several other witnesses who testified against Sessions because of his role in the *Perry County* case changed their testimony, as presented before a committee of the House of Representatives, and even changed testimony prepared for this committee.

No one was around to hear that except Senator Heflin and me.

Sincere advocates of civil rights should recognize that the real significance of the *Perry County* case—and I am talking about sincere advocates of civil rights—they should recognize that the shoe that some seek to lace up on Jeff Sessions is a shoe that is actually on the other foot.

The real heroes of Perry County should be the Justice Department and Jeff Sessions. The prejudiced part of the South is angry with the Justice Department for what they are trying to do to make for a colorblind society; that is a minority.

I know no one who wants more than Jeff Sessions a fair and colorblind society in the whole Nation, including the South, and especially in the district in which he would become Federal judge.

He is being villified by liberals, men I respect for that liberality, for working in that direction, and I find that most ironical.

I have to wonder whether blacks in other parts of the State are worrying if they are next, wondering when a group like the Perry County defendants will come to their county and run roughshod over the political process, stealing their votes.

Yes, they were found not guilty by the jury, but there was no question—anyone who reads that trial—of the presence of pressure and intimidation, a sad situation which Jeff Sessions was trying to clear up for the sake of freedom of blacks to vote for whom they wish; for everyone, but in this case, it was blacks.

Much has been made of the negative aspect of testimony of career Department of Justice attorney J. Gerald Hebert, who, by his own assertion, is very sensitive in racial matters.

A major part of Hebert's deposition to committee staff, and similar testimony by career assistant Hancock, accused Sessions of halting a civil rights investigation. Now, that is a major charge; it was made much of at this hearing and in the press. But the testimony was recanted the next day by both of the men who made the charges; it was in error. They were talking about a former U.S. attorney in the southern district and another county.

So even that portion of Hebert's testimony which is negative is based upon faulty recollection of events and unclear recollections of specific conversations with Sessions.

Moreover, Hebert testified that Sessions was most cooperative in prosecution of civil rights cases, even more so than his Democratic predecessor. Hebert said that Sessions has prosecuted highly sensitive, very controversial and, quite frankly, unpopular cases in the southern district of Alabama. Hebert said that when he needed Sessions' help, it was provided every step of the way.

Hebert continued, I believe that when Jeff Sessions says he is going to do something, he is a man of his word and he will do it. And so if his testimony before the committee is that he would follow the law faithfully, I personally would believe him.

In partial response to a final series of questions Mr. Hebert was asked, at page 142 of the March 13 hearing transcript is the following. Question: "Do you think Mr. Sessions is a racist?" Answer from Hebert: "No, I do not." Question: "If Mr. Sessions says he will be fair as a judge, would you believe him?" Answer from Hebert: "He is a man of his word and when he says something, I believe him. And if he says that he is going to enforce the law, and that he may disagree with the law but he is going to enforce it, I would believe him."

Senator **Kennedy**. I am wondering if the Senator would be kind enough just to yield for a moment. I have just been notified that the Senate is going to be considering the gun bill at 11.

Senator **Denton**. That is what is delaying the chairman.

Senator **Kennedy**. That is an issue I happen to be very interested in.

I have no intention to objecting to this hearing moving ahead.

Senator **Denton**. I have 90 seconds left, Senator, and I appreciate your remark.

So we had two Department of Justice civil rights attorneys say something that was considered to be unfavorable, out of about 14 who talked about him. Now, this is a controversial situation, and one of the two, Hebert, we have already discussed.

The other was Hancock, and Hancock's only charge was refuted and he admitted his error. All the other career Department of Justice civil rights attorneys—Kowalski, Glenn, and Bell; they were the only three career Department of Justice civil rights attorneys; there were other attorneys who testified—testified to the high degree of racial sensitivity exhibited by Sessions and his aggressive, enthusiastic cooperation in pursuing sensitive civil rights cases.

Kowalski, Glenn, and Bell also testified that they would have no problem as private attorneys bringing a black client before Sessions as judge.

Another person, Larry Thompson, a former U.S. attorney from Atlanta, partner in the King & Spalding law firm, member of the National Bar Association, happens to be a black man—a man who, in his own words, has worked very hard over the years for the Atlanta NAACP—testified as to an extensive personal and professional relationship with Sessions as a man and as a friend.

He testified—this is Larry Thompson, a former black U.S. attorney from Atlanta, a partner in a prestigious law firm there, a member of the National Bar, works with the NAACP—testified specifically about work with Sessions on the drug task force, including attendance at meetings and conferences where he had roomed with Sessions on two different occasions.

He testified pointedly that the allegations and statements and testimony in opposition to Sessions pain me, but they do not comport with what I know about Jeff. Those were the allegations before they were refuted.

Thompson went on to say that Sessions will serve our Nation well as a U.S. district court judge, and he will do so in a completely fair and impartial manner. He called Sessions a good and honest man untainted by any form of prejudice.

Now, listen to that man's qualifications, his believability, versus Mr. Figures' and Mr. Figures' involvement and his lack of consistency in what he has testified to here.

Numerous other colleagues and individuals whom Sessions has encountered in his professional capacity testified as to the invaluable assistance that Sessions rendered in criminal civil rights investigations and prosecutions—help which, if not given, would have made it impossible to proceed with one Klan murder case, for example.

So if there was a tendency for any game-playing—and there usually is in this committee, Democrat against Republican, but sometimes it stops. It certainly has stopped when it gets down to the nitty-gritty.

I believe that the dirty politics involved in Perry County, which I gave you about 70 pages of in the newspaper, is the kind of stooping that no one on this committee has ever done—no one.

And if you vote against him for his appointment, I hope you will not be voting in that context, and I believe you will not.

So I have appreciated the fact, Senator Kennedy, and others, that you have at least heard this. I think we should get to the point. Is Jeff Sessions, by virtue of his character, education, reputation, and legal experience, qualified? By virtue of the testimony and the full content of the hearings heard here, which most of us did not hear to any degree at all? Is he qualified, as the President and I believe he is, to be a U.S. district court judge?

Thank you, Mr. Chairman.

Senator MATHIAS. Senator Kennedy.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. Mr. Chairman, the committee has held several hearings on this nomination, and the testimony presented to the committee in these hearings by the nominee himself and other creditable witnesses has revealed racial insensivity on the part of this nominee, and lack of commitment to equal justice under the law, which, in my view, disqualifies him from holding the important position of a Federal judge.

The record speaks for itself, and I do not intend to repeat all of the racial remarks which Mr. Sessions is alleged to have made, many of which he has acknowledged in his own testimony.

The office of Federal district judge is a sacred trust. A trial court judge wields an enormous amount of power over the citizens who appear in his court to vindicate their rights. His attitude and his ruling shape the case for appeal, and unlike an appellate court judge, he cannot be tempered by the need to get another vote for his position on the panel. He is, to a very large degree, autonomous.

It is therefore imperative that we confirm to be a district judge only a candidate who has demonstrated his commitment to fairness and equity.

Mr. Sessions' district is 33 percent black. Those citizens deserve a judge who has demonstrated sensitivity to racial issues. Mr. Sessions has done the opposite and I continue to believe the committee should reject his nomination.

Mr. Chairman, I would like to ask be placed in the record a letter from the NBA, the National Bar Association, from John Crump, the executive director. I ask that it be printed in its entirety in the record.

I would just reference one area of it, and that is it says, "In the course of at least two interviews, Mr. Figures specifically advised us that Mr. Sessions has referred to him as boy during the period when Mr. Figures served as an assistant U.S. attorney.

"We questioned Mr. Figures about these occurrences and found his answers entirely consistent and creditable."

I would ask that that letter be made a part of the record, and also another insert that ties together the testimony on that particular question during the course of the hearing.

Senator **Mathias**. Is there objection?

Senator **Denton**. If the Senator will yield, we have never seen——

Senator **Mathias**. Does the Senator object?

Senator **Denton**. I reserve the right to object.

Senator **Mathias**. The Senator reserves the right to object.

Senator **Denton**. We have never seen this statement before, this NBA letter. It is dated May 6 and it is——

Senator **Kennedy**. Well, Mr. Chairman, given the fact that he has objected, I will read——

Senator **Denton**. I said I reserve the right. I am only asking you what this is.

Senator **Kennedy**. It is a letter from the NBA, signed by John Crump.

Senator **Denton**. Who is John Crump?

Senator **Kennedy**. He is the executive director of the National Bar Association.

Well, Mr. Chairman, I object to the resolution and I will take my time and read the letter.

> Dear Senator Kennedy, in connection with the nomination of Jefferson Sessions, the National Bar Association conducted a number of interviews with the individuals who had personal knowledge of the nominee and his record.
>
> In order to assure that individuals whom we interview are entirely candid, it is general practice of the National Bar Association to treat as confidential the identity of those we interview, as well as those details of an interview which are not included in our written report.
>
> During the Judiciary Committee's confirmation hearing, one witness, Thomas Figures, testified that he had, in fact, been interviewed by the NBA and that he told the NBA that he had been referred to by Mr. Sessions as "boy."
>
> Your office has advised us that you would like to know whether Mr. Figures described this problem when he was interviewed by the National Bar Association. Under the particular circumstances of this case, we have concluded that no purpose would be served by adhering to our usual policy of confidentiality. Mr. Figures had already disclosed, on his own initiative, that he was interviewed by the NBA and had testified under oath about this particular aspect of that interview.
>
> Since the Committee evidently regards Mr. Figures' statement to us, or lack thereof, as of critical importance, we believe that we are under an obligation to disclose to the Committee our knowledge of this matter.
>
> Mr. Figures was interviewed by the NBA in July, August and September of 1985. In the course of at least two interviews, Mr. Figures specifically advised us that Mr. Sessions had referred to him as "boy" during the period that Mr. Figures served as assistant U.S. attorney. We questioned Mr. Figures about these occurrences and we found his answers entirely consistent and creditable.
>
> We understand that some members of the Senate may have assumed, because this matter was not discussed in our report, that Mr. Figures had not described this incident during this interview.
>
> We would caution the Committee against attempting in the future to infer the subject matter of the scope of the NBA interviews from the ultimate content of a report. Because NBA investigations are often exhaustive, at times it is not possible to include in a report all the creditable and serious information of which we may be aware, particularly where, as occurred in this case, the nominee has made a number of statements, all of which reflect a similar attitude.
>
> Sincerely, John Crump, Executive Director.

Mr. Chairman, I had indicated that we are going to be considering the gun legislation on the floor now. I have not objected to this hearing, nor will I, except I would certainly hope that those who do favor the hearing do not take the time to point out the absence of various Senators who are doing committee business on the floor.

If that is going to be repeated, we are going to have to take the only step which is appropriate to us, and that is object to the committee's continued hearing. We are not going to get whipsawed by meeting our responsibilities on a Judiciary Committee matter on the floor and then have it pointed out that we are not in attendance.

I was here at 10 to hear from Mr. Sessions. We have been meeting for 1 hour and we have not heard from him yet. I have taken 3 minutes.

Senator **Denton**. Would the Senator yield for a question?

Senator **Kennedy**. No, I will not yield yet.

So I want to make that very clear. We have been in now, some of us, for 1 hour and 5 minutes. I have taken 3 minutes of the committee's time, and we still have not heard it.

Senator **Biden**. Would the Senator yield for a second?

Senator **Kennedy**. Yes, I would yield.

Senator **Biden**. I understand that my name was taken in vain when I was out about not being here to listen. I was here, have been here the whole time. I was on the telephone because I am told they are going to bring up the Saudi arms sale along with, or in tandem with, the gun bill, both of which I have a keen interest in.

And I want the Senator from Alabama to know I will probably be in and out on both of those bills, but I did not leave the premises, Senator. I was right in the other room and I could hear your lilting voice coming through between that of those talking about Saudi arms sales and you talking about Mr. Sessions.

But I just want to make it clear I was here and intend on staying here until called to the floor, if called to the floor.

Senator **Denton**. Would Senator Kennedy yield for a question about this document?

Senator **Kennedy**. Yes.

Senator **Denton**. It is my understanding from reading it that this is an answer to a question submitted with respect to the issue of whether or not Mr. Figures told the Bar Association in a sworn statement that he had been called boy. And they say, no, he did not, but it is consistent with what else he had said. That is my understanding of this.

I would have to say that they did not hear the rest of the hearing, and that was the intent of my previous remarks. I do not impune either the Senator from Massachusetts or the Senator from Delaware.

Senator **Kennedy**. Well, I am not going to yield any further.

Senator **Denton**. Well, let me just say I——

Senator **Kennedy**. I am not going to yield. I have the floor and I do not yield for further intervention, particularly when the letter itself points out—evidently, it speaks for itself, and that is that Mr. Figures did mention the fact that he was called boy by Mr. Sessions to the investigators. The record will stand on its own.

I really have nothing further to discuss. I think that the committee ought to hear from Mr. Sessions. They have heard enough from all of us.

Senator **Denton**. Well, Mr. Chairman, I would have to make one point in response to that, if I may be recognized for 10 seconds.

The **Chairman** (presiding). The Senator from Alabama, and then we will start going around properly to all of the Senators.

Senator **Denton**. The 18 hours of hearings that took place involved the presence of some Senators only for allegations and accusations. I do not accuse them of any wrongdoing by being absent while those allegations and accusations were refuted or recanted. I just regret it, and that is what I said; I am sorry that Senator Biden is not here now. It is unfortunate from my point of view because I think you should hear it all.

I admit you cannot hear it all, but I believe you both have fairness and I just wish that either you would read the entire hearing and understand that these gentlemen here at the NBA did not hear the refutations—and they have no reason to disbelieve Mr. Figures. There is reason to disbelieve Mr. Figures after the testimony that was given at this hearing.

Thank you, Mr. Chairman.

The **Chairman**. The distinguished Senator from North Carolina, Mr. East.

Senator **East**. Mr. Chairman, I agree with the other members of the committee. I think it is imperative that we get to Mr. Sessions as quickly as we can, because he is here this morning to defend his record, to defend his name, and to establish that he is qualified to be a U.S. district judge.

I would like to say, in defense of Mr. Sessions, since he has not been able to speak here this morning at all, that the record—and I have been here for a large part of the hearings—the record clearly establishes a refutation for every infelicitous remark that Mr. Sessions is alleged to have made.

Now, granted, one can be free to judge who is correct, who is telling the truth, and the context in which the alleged comment was made. But I do think, in fairness to the man, that it is important to point out that the allegations of social insensitivity have clearly been refuted, or at least challenged. Moreover, it has been challenged, I would also note, by members of the black community from Alabama.

Those who had an opportunity to hear Mr. Larry Thompson, a U.S. attorney now practicing law in Atlanta—well, it was extremely impressive testimony. And I think the testimony of Mr. LaVon Phillips was extremely impressive.

We do a disservice to this man to suggest that the record is compelling and overwhelming in terms of condemning him and making it appear that he is a racist. I think it does a great disservice to him, and I think it does a great disservice to our responsibility here on the Judiciary Committee to see that any particular nominee, and this one, of course, included, is given a fair and open and responsible hearing.

One final comment I would make, Mr. Chairman, I am anxious to get on, anxious I think as others are, to let Mr. Sessions speak for himself. However, I would like to make one final comment. I think it is interesting to note that at no time, except for the *Perry County* case—and I would submit there again that is not a conclusive case—there is no evidence in his long record of public service indicating that racial prejudice has interjected itself into his conduct as a U.S. attorney or an assistant U.S. attorney in the actual conduct of cases or matters inherently related thereto. I have not heard one bit of testimony to that effect.

We have here a man who has been engaged, not in private practice, but extensively in the public arena. I think these statements might be more meaningful if we had no other record to go upon, but we do--extensive exposure in the public arena.

Here again, I repeat we have seen no evidence indicating a racially-prejudiced man in the conduct of that office. All of the testimony that has appeared has related to alleged comments made in private. Then, again, we are back to this fundamental question of who do you wish to believe.

But we all know—and I think particularly people in public life—we all know how easy it is to be maligned and condemned by the casual remark, the allegation, the charge. And I repeat, I do hope that we give this man an opportunity to be heard, and to be heard fairly, and to make our judgment accordingly.

Thank you, Mr. Chairman.

Senator DENTON. Would you yield for 5 seconds, Senator East?

I want to acknowledge that you were here a disproportionate amount of time. I mentioned Senator Heflin because he was here the longest. Senator DeConcini was often here, Senator Simon, and several others.

I do not believe anyone chose to be absent because they wanted to not hear the truth, but much truth has been missed because of the absence of Senators, unfortunately, and that is what I meant to comment on before. And I am just hoping the record will be looked at by those who were not here.

Thank you, Senator East.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Heflin.

Senator HEFLIN. I do not have any statement, other than the fact that I approach the advise and consent responsibility in this case as a judge sitting on the bench. I want to listen to all the evidence and I would like to proceed and hear the witness.

Senator MATHIAS. Hear, hear.

The CHAIRMAN. The distinguished Senator from Arizona, Mr. DeConcini.

Senator DECONCINI. Mr. Chairman, thank you. Mr. Chairman, first I want to say I regret that attendance has got to be a major deciding factor in the mind of the Senator from Alabama.

I look at these records. I have my staff look at them; I read them when they are controversial cases. I have tried to be here. I do not like the idea of having it indicated here that if you are not here for every minute, there is something wrong.

He knows as well as I do, and I say this with all respect to him, that you just cannot be every place, and that does not lessen the importance that I give to this nomination or any other nomination, particularly those that are controversial.

I have looked at the record so far with Mr. Sessions. I have not actually decided what I am going to do with this nomination, but I am greatly disturbed. I am here today to listen to Mr. Sessions, but

I am going to have to leave in about 40 minutes, or less, because of other appointments.

But I want to know his attitude about some of the allegations that have been made and the statements that have been made here—statements such as the ACLU and the National Council of Churches are communist-inspired and un-American.

Now, I have read the record where he said those things were taken out of context and not meant in that way. He admired the Ku Klux Klan until he discovered that they smoked pot. I understand from the record that perhaps that was said in jest. I would like to hear that again so I can make a judgment.

But if I am not here and he makes a statement regarding those things, it is not going to weigh any less or any greater because I intend to read his statements and carefully weigh them.

There are many other problem areas that this nomination has brought forward. I am not making a judgment on ideology. I have voted for some of the most liberal judges that were put forth since I have been in the Senate for 10 years when President Carter put them up here, and I disagreed with them on a number of issues, but they had the temperament and they convinced this Senator that they could make a decision based on what the law was and not based on their own strong feelings or opposition to that law.

That is how I look at Mr. Sessions, Mr. Manion, and others, and my judgment will be made by looking at the record as well as listening to the eloquent statements of all of us on the committee.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Illinois, did you have a statement?

Senator SIMON. Mr. Chairman, just very briefly, first, my staff has called my attention to the fact that the Mobile Press Register has been running excerpts, but in some cases these excerpts have not been accurate.

For example, Senator Kennedy asked "Did you use the word 'un-American' in describing the activities of the NAACP and ACLU?"

They have Mr. Sessions giving an answer, "When they involve themselves in promoting un-American positions, my words were that their positions were considered un-American. I do not believe anyone has stated that I consider the NAACP un-American."

In fact, the answer is, "Yes, as I stated,"—an appreciably different answer.

I would just add one other point, Mr. Chairman. I do not think the question is the integrity or the ability of Mr. Sessions, nor, as I look at things, is the Perry County situation one that should be decisive. It is a judgment call.

I do think there are two matters that do trouble me about this nomination. One is, do his off-the-wall remarks display a lack of sensitivity in this whole area of race? And is such lack of sensitivity appropriate for someone who is going to become a Federal judge?

And in that connection, a second question is, will his nomination convey to people an insensitivity on our part, and will they have confidence that, in fact, if he is approved, he will administer justice fairly to everyone?

I have no further comments right now, Mr. Chairman.

The **Chairman**. Any more statements?

[No response.]

The **Chairman**. If not, stand up, Mr. Sessions, and be sworn.

Will the testimony you give in this hearing be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Sessions**. It will.

The **Chairman**. Have a seat.

The able Senator from Maryland.

Senator **Mathias**. Thank you, Mr. Chairman.

The **Chairman**. We have 10 minutes for each Senator for questioning.

Senator **Mathias**. Mr. Sessions, this committee is not unfamiliar with controversial nominations. We have quite a few, for one reason or another, and that is not a bad thing in itself because it tends to bring the issues to the surface and give us an opportunity to view them objectively.

I must say to you, however, that no individual nomination in recent years has attracted as much attention as yours has. My office is literally swamped with letters from people who support you, people who think you should be confirmed, and letters from people who oppose your confirmation.

Why do you think your nomination has attracted so much attention?

TESTIMONY OF JEFFERSON B. SESSIONS III, OF ALABAMA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

Mr. **Sessions**. I think that is an excellent question, Senator Mathias. In my opinion, there is probably no more sensitive area than race relations. It was just 20 years ago when a substantial majority of blacks in the area of the State I am from were blatantly denied the right to vote and basic civil rights that all Americans take for granted today.

In the middle of the *Perry County* case was the 20th anniversary of the Selma to Montgomery march which Albert Turner was a leader of, not something that we were aware of or given any thought to when the investigation began, but that developed. It is a very sensitive issue.

I do not think you can—and I said this publicly and was quoted—I do not think you can call anybody anything more serious today than that they are racially biased and prejudiced. I think that is just horrible.

I think people who know me in Mobile know that is not true. One person told me, "you are one of the good guys; I cannot believe this." I feel like I am one of the good guys. I feel like that I am being caricatured in a way that is not true.

And I can understand people in this country being concerned; I can understand it. I do not like that guy I am reading about in the papers either. I have committed myself to enforcing the law as U.S. attorney. Mr. Hebert says if I say I will enforce the law, I will. I will tell this committee what the law is I will enforce.

He says I will tell you the truth, and I have tried to tell this committee the truth as best I can. I commit that to you. But it is that sensitive area—Selma, AL, somebody named Jefferson Beauregard Sessions III.

I do not know what all has generated this, but I think those are some of the factors, and I am mortified. I feel terrible that the Department of Justice, my President, Senator Denton, have been embarrassed because of this situation. Nothing hurts me worse than that.

But they have analyzed it and maintained their faith in me, and I am deeply appreciate of that, and the people in Mobile that have supported me.

Senator **Mathias**. Mr. Sessions, in light of the statement you have just made, let me ask you a little bit about the episode in which you were quoted as saying that you had agreed that a civil rights lawyer was a disgrace to his race.

Your response, as I recall the record, was not that you denied saying something like, "maybe he is," but that you really did not know why you had made that comment.

I am sure you know, and the members of this committee know, that that kind of epithet, "disgrace to his race," has been leveled probably more times against members of the Federal bench than it has against members of any other group.

I think, in the connection, of Judge Wisdom in Louisiana. I think of Judge Waring in South Carolina, and Judge Frank Johnson in your home State of Alabama. No men have done more than these to enforce the law under the most difficult circumstances.

In the darkest hour of racial problems, these and other Federal judges stood almost alone, upholding the structure of constitutional government. I regret to say that every one of them was at one time or another villified, ostracized, and condemned by the very circle of society from which he had sprung. If not literally called a disgrace to his race, every one of them was called something similar, but in my opinion every one of them was a credit to the republic.

If you are confirmed as a U.S. district judge and if you do ascend to the bench, there may be a day when, in some people's view, you will be a disgrace to your race.

My question to you is just as simple as this: Are you ready to do that? Are you prepared to have your friends, your neighbors, people with whom you have grown up, say about you what you allowed to go uncontested about that civil rights lawyer?

Mr. **Sessions**. Senator Mathias, I agree with you that the members of that old fifth circuit were great leaders for America. I admire the judges that you have mentioned. I admire Judge Pittman in Mobile, a great judge. He took the same abuse, unfairly in many instances—in almost all instances, I suspect.

Judge Pittman and I have talked. We have discussed what it takes to be a good Federal judge, and he told me this, and I believe it. He said the most critical characteristic is intellectual honesty, being able to see the law regardless of whether you agree with it or not, and follow that law regardless of the consequences.

I have done that as U.S. attorney. I have taken positions that were difficult. Senator Biden mentioned that the case in Perry County was one the Government could not lose.

My comment to that would be it was a case the Government could not fail to prosecute. So I did my duty, as I see it, in that case.

But I understand your question, and I have said lots of times I am well aware that if I put on that robe, I am going to be called upon to make decisions that will make people angry—friends of mine very angry—and I am prepared to do that without any doubt.

Senator DENTON. Would the Senator from Maryland permit me to mention that you did not refer to Senator Mathias' mention of the disgrace to the race incident?

Mr. SESSIONS. All right

Senator Mathias, Mr. Hebert testified, apparently, with some rather certainty about that. I was asked about it after only having heard it, I believe—his statement—the day before.

I tried my best to recollect how that could have happened, said I did not believe that about the lawyer in question. He was one of those lawyers, by the way—no question about it; bringing those cases to the Fifth Circuit.

And the rulings they were entering were based, many of them, on Mr. Blackshear's lawsuits and his briefs and his pleadings. And I said it just could not be that I had said anything like that.

I have thought about it later and I can tell this—and although I cannot remember everything in that conversation, I am absolutely convinced that I did not call Mr. Blackshear a disgrace to his race, and I did not acknowledge it in any form.

Senator MATHIAS. My question, I might say to the Senator from Alabama, was really not so much relating to repetition of Mr. Sessions' testimony on this subject as it was whether he was prepared to have the same thing said about him as a result of the responsibilities he would have as a Federal judge. I think he has answered that question.

Mr. Chairman, I see my time has expired.

The CHAIRMAN. The able ranking member, Senator Biden.

Senator BIDEN. I have no questions, Mr. Chairman.

The CHAIRMAN. Did you want to make any statement to the committee?

Mr. SESSIONS. Mr. Chairman, I had some notes and I would like to make a statement to the committee, if it is appropriate at this time, if the other Senators are——

The CHAIRMAN. All right, you may go right ahead.

Mr. SESSIONS. I firmly believe that the cornerstone of our judicial system is a commitment to truth, and therefore I have welcomed investigations by the American Bar Association, the FBI, the National Bar Association, and the minority investigator from this committee. I told Senator Biden I would be glad to have him come down.

The evidence has been gathered, and I submit to this committee that nothing has been advanced to justify not recommending my confirmation and I remain convinced that after a fair and full analysis, you will so conclude.

Let me summarize some of the things that were said. I noticed one thing that happened in the committee, that people will mention things like my experience and Perry County, they throw those out, but and then they back off. But let me say a few things about experience.

I believe my office is one of the finest U.S. attorneys offices in the country. I have tried 17 cases before a jury as U.S. attorney, one 7 weeks against a lawyer and two judges; one, 5 weeks against a banker and a lawyer. I think that is one of the heaviest trial loads for any U.S. attorney.

And in 13 years of my active practice, I have never had a case reversed by an appellate court. Those who know me best, who work with me on a regular basis—what do they have to say about me?

The 10 Mobile County circuit judges, all Democrats, one of whom is black, support my confirmation. The Mobile bar association executive committee has unanimously reaffirmed its confidence in me after the initial hearings. All the State district attorneys in my district have endorsed my confirmation. My immediate predecessor testified for me in my behalf at this committee.

But some of you may say, OK, we agree you run a good office; you are an experienced trial lawyer; you have a good reputation; you are popular. But what about your record on civil rights?

Look at the record. It will show that I have been impartial. Through fiscal year 1985, I find that of approximately 200 defendants that we have tried before a jury—less than 40 were black.

My office has been aggressive in civil rights. At the time I took office as U.S. attorney, I assigned assistant U.S. Attorney Thomas Figures to handle civil rights. He continued in that position until he voluntarily resigned.

I specifically directed him at the time I initially talked with him to advise me of any problems that he saw in the civil rights area, because I wanted to ensure that those matters were properly handled. Mr. Figures admitted that in his testimony before this committee.

The record is clear. I have never refused to allow Mr. Figures to proceed with any civil rights case. I have never assigned civil rights cases to another lawyer other than Mr. Figures. I have never reassigned civil rights cases from Mr. Figures to keep him from prosecuting it or for any other reason.

On several occasions, I told him that I would assist him in the trial of a civil rights case or I would personally try the case if he thought it was appropriate.

Further, five career attorneys from the Civil Rights Division of the Department of Justice have testified before this committee. Not a single one of those attorneys have maintained that I have refused or failed to act properly with regard to any case that has ever come before me.

I have supported the Civil Rights Division in the cases, as they testified, some of which were unpopular. Barry Kowalski and Bert Glenn, who worked with me closer than Mr. Hebert did—and we spent more hours together—and Dan Bell of the Civil Rights Division, who knew me back when I was an assistant U.S. attorney in the mid 1970's, each stated to this committee they would have no hesitation in bringing a civil rights case before me.

Well, you may further ask, what about this Perry County vote fraud case? You indicted three prominent black civil rights leaders for voter fraud and they were acquitted on all charges.

That investigation arose from complaints by black elected officials and was founded on strong evidence indicating that the defendants had organized a campaign to collect and alter absentee ballots of black voters.

Into the fourth year of my term, that was the first criticism we have had in civil rights. Clearly, it turned out to be a springboard for the opposition to my confirmation.

Without going into the details of that case, which we did in great extent earlier, I want to point out a few things. It was investigated and reviewed by the Department of Justice, who approved the investigation—and, actually, one of their attorney drafted the indictment, the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, investigators from the Southern Property Law Center on behalf of the defendants, the eleven defense attorneys who participated in the trial and their investigators.

And an in-depth review was conducted by the investigator from this committee, who conducted interviews with the defense attorneys regularly, and the defendants in the case, and included a visit to Perry County itself.

After all of this, there has yet to be shown any wrongdoing by me or my office, and there will not be. This case was a public corruption case, not a civil rights case. If it were presented to me ten times, I would prosecute it ten times. Perhaps it was not good judicial politics, but I have never played politics with my office and I will never decline to prosecute a case because it may cause me disadvantage.

As U.S. attorney, there can be no untouchables. I have prosecuted judges, lawyers, politicians, businessmen, bankers, and, yes, civil rights leaders. There can be no untouchables in our legal system.

Well, you say, Mr. Sessions, you have answered those questions, assuming you have. What do you say about these racially-insensitive statements?

Let me speak frankly. All of us know that when the confidence of a private conversation is breached by a party with ulterior motives or one who simply misunderstands what the speaker says or means, the speaker can always be embarrassed.

I enjoy repartee and frequently engage in devil's advocacy. In short, when I talk to friends, I do not guard every word that I say because I think that I know they know that my commitment to equality and justice is real, and they would not twist my words or misinterpret what I am saying to them.

The last time I testified before you, I believed that if I honestly replied to your questions that I would have no problem in being confirmed. I tried not to impune the motives of those who provided information against me. I tried not to call them liars.

In fact, my reaction was to attempt to reconcile their statements with my own recollection of events, which was different. These efforts and my explanations of how these certain statements attributed to me were made, were unfairly branded as admissions.

I did not admit insensitive statements then, nor do I now. I deny as strongly as I can express it that I am insensitive to the concerns of blacks.

Now, Mr. Figures specifically asserted that I called the NAACP and other organizations un-American organizations. This is not true and is a terrible mischaracterization of the conversation I had with him approximately 4 years ago. I described that conversation previously. I will not do so again unless this committee asks further questions.

But it was an innocent conversation referring to the fact that civil rights organizations and the National Council of Churches lose their credibility when they take positions that other people, or people, consider un-American.

He said I spoke—in his testimony, that I "spoke as a man gravely concerned by the threat which he believed these organizations posed to American values." That is not true, members of this committee. That is absolutely false.

The NAACP is a great organization, as I have stated, and it has contributed magnificently to the advancement of rights of minorities in the South.

As to the SCLC, I have had at least three personal conversations with the Reverend Joseph Lowery, its leader. Our office has worked with him concerning a case in Mobile. He expressed his appreciation to us for our courtesies that we extended to him.

I know what I believe about these organizations—the NAACP, the National Council of Churches, the SCLC, the ACLU. These organizations are essential organizations in a pluralistic society. I welcome their role. They are quintessentially American organizations. They are not un-American organizations.

Another charge by Mr. Figures was that I was serious when I made the comment that the Ku Klux Klan was OK until I learned they smoked pot. Amazingly, he asserts that I "only objected to the Klan because of drug use by its members."

This assertion is ludicrous. It is an indication—I hate to say it—that he has an agenda that goes beyond an accurate recollection of the facts. My retort was made 2 years after the murder of a young black man, Michael Donald, by the Ku Klux Klan. It was made during investigations of the Klan by my office.

I had just learned that the investigation had revealed that the Klansmen had left some meeting, and gone to another one, and smoked pot. The comment ridiculed the Klan. I detest the Klan. I insisted that the prosecution of the Klansman, Henry Hayes for the murder of Michael Donald be handled in State court, where he would be subjected to the death penalty or life without parole—penalties not available in Federal court.

In fact, State Judge Braxton Kittrell, who testified before you on my behalf in this hearing, sentenced him to death, although I believe it has been reversed to life without parole at this time.

Later, our office prosecuted Benny Jack Hayes and his wife—he was the head of the Ku Klux Klan in Mobile—for mail fraud. He is serving time in prison right now. We sought the maximum penalty in that case.

Barry Kowalski and Mr. Bert Glenn testified that they had heard the statement. They considered it a joke and were appalled that it would be suggested that this comment reflected my views on the Klan.

It has been very painful, members of this committee, to read comments in the national media and hear comments on the radio suggesting that that was a serious comment by me. I am outraged at that. I abhor their bigotry and hatred, and am shocked that Mr. Figures or anyone else would suggest otherwise.

Now, this committee has seen Mr. Paul Hancock, an attorney with the Civil Rights Division, appear here and recant his sworn testimony that I had blocked an investigation in Conecuh County.

It turned out that he was gravely mistaken in that assertion and, in fact, it was another U.S. attorney in another county altogether.

Before that recantation, I would like to point this out to you, not for the substance of that event because I know it is not significant. Mr. Hebert testified about the matter, and Mr. Hebert recalled it also.

He quickly replied, "The incident you are referring to is one I have personal knowledge of." He also stated, "And we found out that, in fact, Mr. Sessions had gotten in contact with the agents and called off the investigation."

Senator Biden asked, "What was your reaction to that?" Mr. Hebert said, "Well, as I recall, we were rather upset about it." Further, Mr. Hebert stated, "All I can remember is that the conversation, as I recall, took place between Mr. Hancock and Mr. Sessions, and Mr. Sessions just indicated he did not think the investigation should go forward."

Now, I simply refuse to believe that Mr. Hancock, who came in here and apologized for his error, or Mr. Hebert were deliberately out to discredit me or embarrass me. But I want to point this out: When I was asked about it, I did not call them liars. I did not say this is unbelievable. I merely said there must have been some kind of mistake. I could not recall anything like that.

I even admitted there may have been a phone call like that. I just could not believe that two career attorneys from the Department of Justice could be so mistaken about such a significant event.

Now, this matter is a dramatic indication, I suggest, of what can happen when recollections of past events go awry. Recollections of old private conversations are certainly far more susceptible of inaccurate memory and bias than an actual case. Thank goodness there was a record that we could go back and certify that this was an error.

What is upsetting to me is that the fact of this incident, which took place 5 years ago, could have colored Mr. Hebert's view of me and caused him to place a sinister connotation on perfectly innocent comments that I have made subsequently. It could have biased his recollection and even his entire opinion of me.

I will point out that Mr. Hancock and Mr. Hebert both conveyed that information, apparently, to the American Bar Association when they did their evaluation of me, and I think that had I been sitting as a member of that Bar Association Review Committee, I would have been concerned if a U.S. attorney had unilaterally blocked a legitimate investigation of a civil rights case. But it did not happen.

Now, certain news accounts have suggested—they talked about Mr. Blackshear and I have covered that.

I was also flabbergasted to hear Mr. Figures say that he was regularly called "boy" in my office. He said I called him this, twice. I state categorically that I have never called Mr. Figures "boy".

As Senator Denton rightly remarked, this statement is a caricature of the reality of a professional office or any, really, place in the South today.

Mr. Figures stated that two career attorneys in my office, Mr. Rollison and Ms. Jenny Grenade, heard me refer to him as "boy". They have denied that by affidavits submitted to this committee.

He further said that Mr. Edward J. Vulevich, 17 years an assistant, also had called him "boy". Mr. Vulevich sat and testified in this room and he categorically denied that in his testimony.

"Boy" is a reprehensible term to use to describe a black man in the South. Because of the history of that term, I have never used the word "boy" to describe a black, nor would I tolerate it in my office.

As you can see, I simply did not make some of the statements that had been attributed to me, and the others were greatly distorted, tending to create a caricature of me. It is this caricature that you are asked to reject, not the Jeff Sessions that is sitting before you today.

I am not the Jeff Sessions my detractors have tried to create. I am not a racist. I am not insensitive to blacks. I supported civil rights activity in my State. I have done my job with integrity, equality, and fairness for all. I have served well as U.S. attorney. I am proud of that record, and I ask that you will consider that when you are making your evaluation.

I would be pleased to answer any further questions you may have.

Senator BIDEN. Mr. Chairman, I passed my time because there was not anything upon which to speak at the time, but I would like to ask my questions now, if I may.

The CHAIRMAN. The distinguished Senator from Delaware, the ranking member.

Senator BIDEN. Mr. Sessions, let me ask you a question. When you testified the first day under oath, is it not true that you were told what questions you would be asked? It is the normal process.

I mean, did not majority tell you they were going to ask you questions about these allegedly racially biased remarks and the NAACP? Were you not aware of that a full day ahead of time, at least?

Mr. SESSIONS. Well, the deposition, I believe, of Mr. Hebert and Mr. Hancock were taken the afternoon before.

Senator BIDEN. No, no, that is not what I meant.

Mr. SESSIONS. I understand that. I was aware——

Senator BIDEN. Did you not know that the chairman was going to ask you the question that he asked you about the NAACP remark?

Mr. SESSIONS. Yes——

Senator BIDEN. Did you not know you were going to be asked——

Mr. SESSIONS [continuing]. Although I understood it related merely to Mr. Figures' statement.

Senator BIDEN. I understand that. Were you not also told by the chairman that you should be prepared to answer the question relating to the National Council of Churches?

Mr. SESSIONS. Yes.

Senator BIDEN. So it was not like you were all of a sudden hit with this notion. I mean, it seems like a selective rendition of history here, as I listened to your opening comment today, as if somehow these remarks sort of caught you off guard and you were knocked out of the blue and you did not have time to think about them and you were just trying to sort of balance, you know, what the people said who allege you said these things with what you thought.

I mean, you were fully prepared when you walked in here, were you not, the first day?

Mr. **Sessions**. Senator Biden, I think the biggest problem I had in my testimony related to my inability to respond well to Mr. Hebert's allegations and Mr. Hancock's.

Senator **Biden**. Let us forget about Mr. Hebert and Mr. Hancock.

Mr. **Sessions**. I understand that.

Senator **Biden**. I tell you what, I think your biggest problem from this Senator's standpoint is your recollection the first day and your recollection the last day. Let us just go to the first day of the hearing, before Mr. Hebert or anybody; right out of the box, the chairman doing what I would do if I were chairman, attempting to give you an opportunity to respond to what, in fact, were the clear and known allegations you would have to respond to.

I think the chairman and the staff did exactly what they should have done, exactly what I would have done were I chairman—threw you up the questions, as we say in politics, in softball form.

The **Chairman**. Would the Senator yield a minute?

Senator **Biden**. Yes, sure, I will.

The **Chairman**. I would like to make the statement that I did not talk to him before the hearing. He did talk to the investigator and the investigator told him some of the charges that had been made, and I think he told him that it would be necessary for him to answer those charges.

As I understand, there was not any collusion or anything of that kind.

Senator **Biden**. I am not implying that, Mr. Chairman.

The **Chairman**. But he was telling him that these are matters that needed to be answered.

Senator **Biden**. Absolutely.

The **Chairman**. I did not confer with him beforehand personally. I have been impressed with his sincerity, his fine record, and unless something comes up that I do not foresee, I expect to vote for him.

You may proceed.

Senator **Biden**. I understand that, Mr. Chairman, and that is the point I am trying to make. The way these hearings work, and it is appropriate—the appropriate way is that Mr. Short and my investigator, Mr. Govan, go and look at the allegations and they straightforwardly tell the nominees, as best we can, beforehand, these are the allegations and this is what you are going to have to respond to.

I was not implying collusion at all. I think you have done the job as chairman in this hearing exactly how it should be done. I think the entire investigation staff team has done what they have to do.

Mr. **Sessions**. I welcome that.

Senator **Biden**. But I just want to make it clear that when you listen to that statement, though, it sounds like—your statement today, Mr. Sessions—it sounds like somehow you were just caught off guard by these things.

Let us just go back to the first day, the first question. The first question was from the chairman: "Mr. Sessions, it has come to the attention of the committee that certain comments have been attributed to you. Mr. Sessions, would you tell the committee if any of the following comments were made by you, were they accurate, and in what context were they made?"

Now, you knew you were going to be asked that question, did you not?

Mr. SESSIONS. Well, I had seen that allegation in a document.

Senator BIDEN. No. Answer my question, if you would. Did you know you were going to be asked that question?

The CHAIRMAN. Well, let him answer. He has got a right to explain it.

Senator BIDEN. I understand he has a right to explain it, but I would like an answer. Did you know you were going to be asked that question?

Mr. SESSIONS. I knew that that was an allegation pending before the committee and that——

Senator BIDEN. I am not asking you that.

Mr. SESSIONS [continuing]. I would be asked about it by somebody.

Senator BIDEN. You knew you were going to be asked about it, did you not?

Mr. SESSIONS. Yes, yes.

Senator BIDEN. Right. Now, so you came into this room——

Mr. SESSIONS. I just was not told exactly that was the—who was going to ask it.

Senator BIDEN. Let me put it this way: Did you have any doubt you were going to be asked to explain the allegation regarding the National Council of Churches?

Mr. SESSIONS. No.

Senator BIDEN. So you came prepared to respond to that, correct?

Mr. SESSIONS. Yes.

Senator BIDEN. Now, let us read your response, and let me read the rest of the question. This is still the chairman—excuse me; let me back up.

"Mr. Sessions, would you tell the committee if any of the following comments were made by you, are they accurate, and in what context were they made? The National Council of Churches, the NAACP, the SCLC and PUSH are un-American organizations with antitraditional American values."

Mr. Sessions: "Mr. Chairman, the best I recall, that took place like this. My assistant, former assistant, Thomas Figures, who is black—his office was right across the hall from mine for 4 years. We went over and I chatted in his office and philosophized, I call it, a number of times, and I was over there regaling about the National Council of Churches.

"I am a United Methodist and we fund them and my money goes to them, but I have complained about them and I was making this point, as I recall this conversation. And I said, you know, when an organization like the National Council of Churches gets involved in political activities and international relations that people consider to be un-American, they lose their moral authority and their ability to function or to speak with authority in public because people see them as political.

"And I also barreled on and I said that it was true that"—excuse me—"And I barreled on and said that that is true. The NAACP and other civil rights organizations, when they leave basic discriminatory questions and start getting into matters such as foreign policy and things of that nature and other political issues—and that is probably something I should not have said, but I really did not mean any harm by it."

And then, skipping, the same day, again establishing the fact that you clearly were aware that you would be asked about this and came fully prepared, in response to Senator Kennedy——

Mr. SESSIONS. Well——

Senator BIDEN. You can answer both of these when I read them, OK?

On page 107, you said, "As I believe I stated, yes, before you came, which is I said that when they involve themselves in promoting un-American positions or positions—my words were considered un-American, and particularly foreign policy issues and that sort of thing. They lose support, yes.

"But I have not, I do not believe"—interruption by Senator Kennedy: "Wait a minute. What foreign policy matters are you talking about?" Mr. Sessions: "Oh, the sanctuary movement, the Sandinistas, you know. I gave that kind of stuff"—interruption, Senator Kennedy, and so on.

Now, how could anyone conclude from reading your statement the first day that you did not acknowledge that you referred to them under certain circumstances as being un-American? That is my question to you.

Mr. SESSIONS. Senator Biden, the first answer is essentially what I said earlier today, that I had a conversation in which I said when the organizations as we described involve themselves in international relations that people consider to be—many people consider to be un-American, that that hurts their cause.

I did not—I specifically denied right after that—I certainly do not think the National Council of Churches, and certainly not the NAACP, as being un-American. I went on to talk about the NAACP.

Senator BIDEN. I understand your answer. How do you explain your answer to Senator Kennedy, then? How could a reasonable conclude that when you said, and I quote, page 107—do you have it there?

Mr. SESSIONS. Yes.

Senator BIDEN. Page 107, line 22: "As I believe I stated, yes, before you came, which was I said when they involve themselves in promoting un-American positions or positions, my words were considered un-American, and particularly foreign policy issues and that sort of thing."

And then Senator Kennedy goes on to ask you what sort of foreign policy things makes them un-American, and you state, "Oh, the sanctuary movement, the Sandinistas, you know, that kind of stuff."

Now, you are telling me under oath that you did not say that under those circumstances you thought they were un-American?

Mr. **Sessions**. I think that is correct. I think that is an unfair reading of what happened.

Senator **Biden**. Why do you not tell me what is a fair reading?

Mr. **Sessions**. Senator Kennedy came in; he had not heard my previous explanation. He had not heard that and he asked me about it. I was trying to do a soft-hand, quick, offhand summary of it so I would not bore everybody else who had heard it.

And he asked me had I ever used the word with regard to the ACLU and the NAACP, and I said, "Yes, as I stated before, which I said when they involve themselves in promoting un-American positions or positions, my words were considered un-American," and that is what I was referring to. They were considered to be un-American positions by many.

"And particularly foreign policy and that sort of thing, they lose support, yes, but I have not, I do believe," and then he cut me off.

Senator **Biden**. If you are willing to give me another 2 minutes, I will not take any more time this hearing.

I want to make sure I understand now. You are saying to us under oath today that you do not believe that the Council of Churches has ever been engaged in what you considered to be any un-American activities? Do you understand the question?

Mr. **Sessions**. Ask it again.

Senator **Biden**. Are you telling us that you, Jeff Sessions, at no time have concluded that the National Council of Churches has engaged in un-American activities?

Mr. **Sessions**. My opinion is they have not. They may have taken positions that I consider to be adverse to the security interests of the United States.

Senator **Biden**. Does that make them un-American?

Mr. **Sessions**. No, sir, it does not.

Senator **Biden**. Does that make the positions un-American?

Mr. **Sessions**. No.

Senator **Biden**. So you can have a position adverse to the security interests of the United States and not be un-American. Is that what you are saying to us?

Mr. **Sessions**. Well, if you hold it in good faith, you are not an un-American person or an un-American organization, no, sir. I believe in free debate. I believe in free discussion and disagreement on issues.

And I agree that many of the issues I may believe in about Central America, many good people—I may be wrong and other people may be right about it.

Senator **Biden**. I have no further questions.

The **Chairman**. Mr. Sessions, let me ask you this. As I understand, what he is trying to bring out here is whether you yourself said these organizations were un-American, meaning the NAACP, the National Council of Churches, and one or two others, maybe.

Now, as I understand from your testimony, and I want you to correct me if I am wrong, your position is that you said when they engage in certain other activities, it might be considered by some people as being un-American.

Is that what you said or meant to say?

Mr. **Sessions**. That is what I believe I meant to say. I believe that is what I said. I said it causes them to lose support. They lose their moral authority.

The **Chairman**. Let me ask you the direct question, have you yourself called them un-American?

Mr. **Sessions**. No, sir.

The **Chairman**. You have not?

Mr. **Sessions**. I have not called those organizations un-American.

The **Chairman**. Well, I think that answers the question. That is what he is trying to get at, I think, whether you yourself have said they are un-American. I just wanted to see if we could clarify the point.

The distinguished Senator from North Carolina.

Senator **East**. Mr. Sessions, on these various statements that you have had to respond to, which perhaps—hindsight is a good thing—you wish they had never occurred. I just want to reaffirm again in trying to come to what I think is a fair decision in this case—and I think the evidence points this way—you sum it up as a caricature of your position.

Rather than taking each particular statement in isolation and trying to rehash the truth or falsehood of it, depending upon your point of view or upon those who are hearing you, I gather what you are saying here under oath and as truthfully, and as honestly as you can, is that these statements or this pattern of statements weave a caricature of you.

They in no way reflect your true, honest feelings, and there is no doubt in your mind that if you are approved by this Committee and if you are confirmed by the United States Senate that you could, and would, apply the law totally devoid of racial insensitivity or racial prejudice.

There is no question that you are a very competent attorney. There is no question that you have performed your duties as a U.S. attorney in an extremely responsible, efficient and effective way. No one is questioning that.

I noted at the outset, and I would like to underscore it again, that I do not know that anyone has suggested, in your conduct of the office, in your prosecution of cases, your handling of cases, that you have operated your office and your public responsibilities in a prejudiced way or racially-insensitive way.

I would suspect if you had that that would have been out a long time ago. You probably would have been hounded out of office by now. I am sure that in the city of Mobile, AL, and in southern Alabama generally one could not be U.S. attorney and be engaging in a constant, consistent pattern of racial insensivity and racial prejudice without causing loud cries of protest.

That would be my assumption in this case, so I am somewhat inclined to give you the benefit of the doubt that this particular sequence of statements and comments that we have been over, and over, and over again must be out of context. They must be a caricature; they must not be a true reflection of the heart and the soul and the mind of Jeff Sessions.

Ultimately, that is what we come down to, and I would like in every way that I can to give you the benefit of the doubt. I am giving you the benefit of the doubt.

I have rambled on here a bit, but I would like to get your response to that, because I think it is upon that particular point that this case turns either yea or nay.

Mr. SESSIONS. I am not sure exactly where to begin in that. I will say that I have referred to the process that has developed—and I have no bitterness about it. I am proud to have people investigate. They have done a fair and aggressive job, and that is fine.

It has resulted in a nightmare type situation, to read yourself called these horrible things in national news media. I noticed, for example, that Senator Biden read this quote where it says I talked about the first answer to the question, then I talked about where people consider the NAACP to be un-American.

And then I went on and said that is something I probably should not have said, but I did not mean any harm by it. The New York Times and Newsweek Magazine both quoted me as saying "I may have said that the NAACP is un-American, but I meant no harm by it," both of them in direct quotes.

I know how things can be misconstrued; I am not bitter about it. I am a lawyer. For 13 years I have practiced law on the ground floor of the law. I am not an upstairs U.S. attorney; I try cases these past 4 years. I have briefed cases myself to the court of appeals; I supervise that.

When in private practice, I was with good law firms. I know what the law is. My idea of a judge is one who gets to the law and does it and makes a fair, intellectually honest ruling, and that is what I am committed to do.

Does that approach answering your question?

Senator EAST. Well, again, you are saying—I guess I will ask you to repeat it for a final time. You have said that, as you see it, the pattern of these particular allegations are out of context; they are a caricature. They do not in any way represent your true sentiments, and you were horrified, and I think anyone can from time to time be horrified that something he may have said inadvertently or in jest, or in any particular context, may be ripped out of that context and made into an horrendous caricature having no reasonable relationship to what was intended by the speaker or his ultimate purpose.

And so you are saying here under oath that the allegations raised against you create a caricature, not a true picture of Jeff Sessions, and that there is no question in your mind that if approved by this Committee and by the United States Senate that you would be able to conduct yourself on the bench in a completely fair, equitable, honest, and open way.

If your answer is yes—and I gather you are saying yes—I accept it. You are saying it under oath.

Mr. SESSIONS. Yes.

Senator EAST. To me, that resolves the question because, again, the question of your competence and your ability is—no one has challenged that.

And I repeat as a final point—one which I think it is very pertinent and perhaps has been understated—namely, in the whole time you have been a U.S. attorney or assistant U.S. attorney, I have heard no allegation from any witness that you have operated those offices in a racially—insensitive or racially prejudiced way. If so, I think we ought to have heard from those witnesses by now.

Thank you, Mr. Chairman.

The **Chairman**. The distinguished Senator from Alabama, Mr. Heflin.

Senator **Heflin**. Mr. Sessions, I was not exactly sure exactly what your answer was with reference to the allegation of Mr. Hebert who testified concerning James Blackshear and quoting a judge as saying that he was a disgrace to his race.

As I recall from Mr. Hebert's testimony, he said on one occasion that your reply was that "maybe he," meaning Mr. Blackshear, "is," and on another occasion he testified that your reply was that he, Mr. Blackshear, "probably is."

Now, what is your testimony this morning pertaining to that? You used the words "he did not acknowledge," or some such words; I am not exactly sure. Would you tell us what your——

Mr. **Sessions**. Yes, sir; I have thought about that an awful lot. I had been told before I came here that one person who had been interviewed by an investigator had been told that there was absolute proof that I had called Jim Blackshear a disgrace to his race.

That was what I was concerned about. I could not believe that was true, and knew that was not. I recall some conversation in which that was said. Mr. Hebert's testimony came to me, I guess, probably not until the morning of the hearing.

As he described it, I said "maybe he is," in response to his inquiry to me, so I never did say those words and I never said that he was a disgrace to his race, according to Mr. Hebert or anyone else.

I have the greatest respect for Jim Blackshear, and I have thought as hard as I can. I think I made a mistake last time in trying to speculate and saying maybe this and maybe that. I do not recall that conversation, but I can tell you, Senator Heflin, with absolute honesty, I did not say it and I did not intend or mean or in any way affirm that that was a correct statement. It is incorrect. He is a superb person.

Senator **Heflin**. Well, in other words, your position is that you are in conflict with Mr. Hebert in regard to the reply that he says you made, whether it be, "maybe he is" or that "he probably is." You are saying that you did not make that statement?

Mr. **Sessions**. I am saying that that—I did not. At least I certainly did not intend to communicate anything like that to him, and I believe his recollection in that is error.

Senator **Biden**. Will the Senator yield on that point?

Senator **Heflin**. Yes.

Senator **Biden**. What did you mean, then, Mr. Sessions, when you said the first day, knowing the question was going to be asked, "I suppose I would have said that?" What did you mean by that?

Mr. **Sessions**. I do not recall saying that, Senator. Where is that? Do you have the page?

Senator **Biden**. The words you said—page 70, you said, "I suppose—I do not know why I would have said that." That is a quote, "I suppose—I do not know why I would have said that."

Mr. **Sessions**. I do not know why I would have said that. That is what I meant by that, and I certainly do not know why I would have said anything like that. I will say this, that after seeing Mr.

Hebert's error when he was so positive about the Conecuh County incident, I am less inclined to give him the benefit of the doubt now than I was last time. I just do not believe that happened.

Senator **Biden**. Well, I think you are demonstrating to me you are a competent advocate, you know. You find a mistake in what the other fellow says and then go back and use that to recant your own statement. I think that is kind of imaginative. I find that insightful. You are a good advocate.

Mr. **Sessions**. Senator, I do not believe I recanted my statement. He recanted his.

Senator **Biden**. Not on this point. You pick something that is unrelated and you use it to discredit this point.

Mr. **Sessions**. It just goes to his credibility and the accuracy of his recollection.

Senator **Biden**. Well, let us talk about the accuracy of your recollection. You said in response to that question, "I understand that statement has been made. I recall a conversation in which that was mentioned and my—I may have—I believe that statement was—I said maybe he is, and that is really disturbing to me.

"I suppose—I do not know why I would have said that, and I certainly do not believe that. The lawyer in question is one of the finest lawyers"—and then you go on to point out, "but I have heard people say he has gotten some high fees, $100,000 or maybe even nearly a million in one, for prolonged litigation that he and his firm have been involved in. And they won and they get this money, and I have defended him," et cetera.

I mean, I cannot fathom how that statement by you does not at least acknowledge at the time you said it that you acknowledged that you may have said that statement. How can you read that any other way?

Mr. **Sessions**. What I have said to Senator Heflin is that I have not in anything I said intended to convey that I believed that he was a disgrace to his race.

Senator **Biden**. Well, you did say something that did convey, not only to me but I think to anybody who would reasonably read your answer on the date of your first hearing here, the date I do not recall—March 13, 1986, page 70 of your testimony, you said something that a reasonable person would view as having conveyed the notion that at least you may have said that.

Mr. **Sessions**. And I also said that Mr. Hebert was a man I respect. I do not know why he would say that. "Maybe I said something like that," I believe was the testimony. I did not recall it then and I——

Senator **Biden**. Every day in the U.S. Senate, I take issue, for example, with the distinguished Senator from North Carolina. I say I think his recollection and notion of the Constitution, and he thinks mine, are dead wrong, but I respect him, and I do respect him.

Senator **East**. I never said they are dead wrong. [Laughter.]

Senator **Biden**. Well, in fact, I must admit I have said some of yours are dead wrong, but I do, in fact, respect you.

Anyway, I find this selective recollection somewhat disturbing.

Senator **Denton**. Well, if the Senator will yield, I believe there is a begging of the question. As I understand Mr. Sessions, he was trying to avoid calling Mr. Hebert a liar or mistaken. When he was saying things like "suppose this and that," he was talking about something having been said to that effect, but never indicated that he said it.

Is that correct or not?

Mr. **Sessions**. That is correct, Senator. At least I never—yes.

Senator **Biden**. Well, Senator, that is an interesting reading of that testimony. I find it—let me, if you will hold on a second, just read the testimony. I mean, I just do not understand how you all read the testimony that way, the first day.

I guess maybe my problem was I, like Mr. Sessions, went to law school and I thought that——

Senator **Denton**. I would be happy to hear it read.

Senator **Biden**. I just read it. I mean, you know, how do you conclude something different than that?

The **Chairman**. Let us not argue. If you have questions on either side, ask your questions.

Senator **Heflin**. I believe now that they have taken my time. Can I get it back? [Laughter.]

The **Chairman**. Senator Heflin, I believe you have the floor, do you not?

Senator **Heflin**. Yes, sir; I started out asking one or two questions.

Do you have a recollection that a conversation ever occurred with you and Mr. Hebert or with anybody else relative to Mr. Blackshear, quoting a judge in Mobile who said that Mr. Blackshear is a disgrace to his race? Do you have a recollection of any of that?

Mr. **Sessions**. After having looked over Mr. Hebert's testimony, I do believe that is essentially the way that conversation developed, that he came in and said something about having heard a judge had said that, not that he knew it or anything of that nature.

And I will state for the record I certainly have never heard that statement made by any judge.

Senator **Heflin**. In other words, you recall that Mr. Hebert came into your office and did make the statement that a judge in Mobile had stated that Jim Blackshear was a disgrace to his race?

Mr. **Sessions**. My recollection is that a conversation of that nature took place. It must have been 4 years ago, probably. He said he was most active in Mobile in 1981. I think he was, and it very difficult to recall any details. I do recall that phrase and I believe Mr. Hebert said it.

Senator **Heflin**. Well, do you state, now, that you do not recall making a response, or do you state that no response was made, or do you state what response was made, and if so, the content?

Mr. **Sessions**. All I can say to you, Senator Heflin, is I am absolutely certain that I either did not make that response, or if I made anything similar to that, I did not mean to convey to him that I agreed with that statement. I feel absolutely confident in telling you that.

The **Chairman**. Any other questions, Senator?

Senator **Heflin**. When did Mr. Thomas Figures leave the U.S. attorney's office in Mobile?

Mr. **Sessions**. It was July 3 of last year during the Perry County voter fraud trial.

Senator HEFLIN. At the time that he left, was there any feeling—I mean, was there any conversation between you as to why he was leaving, or was there any protest on his part or any statement on his part at that time?

Mr. SESSIONS. It was in the second week of that trial. I had gone to Selma that week; I was not there the first week. And I received a call from him. He had previously mentioned it to another attorney in the office early in the week. He called a little later in the week and told me that he was resigning.

It was a surprise to me. I did not ask for it, and he was asked, I believe, by my administrative officer—apparently, the Department of Justice likes to get a postemployment form that says why you resigned. And he, in a very abusive manner, told her he was not saying why he resigned.

Senator HEFLIN. Well, were there any hard feelings or any differences between you and him at the time that his resignation took place?

Mr. SESSIONS. Senator Heflin, it was not—we did not have any hard feelings. We had worked together on this case I tried for 7 weeks. I had prepared it and I realized I could not try it by myself. We had two judges and a lawyer as defendants, and I asked him to help me.

And for 7 weeks, we worked side-by-side, 8, 9 at night, weekends, trying to prepare that case, which was a very——

Senator HEFLIN. That is not the *Perry County* case?

Mr. SESSIONS. No, sir. This is a racketeering case, a public corruption case in Mobile.

And he is not an easy person to work with, but I was very pleased with his performance and his cooperation and his dedication. I have told him that, and I mean that sincerely. He did his job quite adequately.

He did have—he mentioned that he had problems with relations with clients. That is a category that every attorney has to be rated on, and I had viewed him as having some problem in that area. That is true, in my opinion, and I cautioned him about it. But that was not, in my opinion, a basis for that kind of hostility.

Senator HEFLIN. Was there ever any instance or circumstance between you and Mr. Figures that you would describe as acrimonious, or that, in effect, you can point back to and say this is the reason that he is trying to get back at me, if he is trying to get back at you for something?

Here, you have a good deal of difference between you and him, and you worked together for about 3 or 3½ years. Is there something between you and him that may have caused this relationship?

Mr. SESSIONS. My honest view is that he was—he saw bad motives sometimes when it was not there, and that was a problem in the relationship. I did not really believe that there was a serious problem in that regard, but I think perhaps it was.

We did have a disagreement over this *Murray* case, *Corps of Engineers* case, where he had returned an indictment and he wanted to dismiss it. And I challenged that and, just as I should, made sure that was the right thing to do. We reevaluated the case for a few weeks and I agreed to dismiss it.

I think he was upset about that. That was something he was upset about.

Senator HEFLIN. How long before he left was that?

Mr. SESSIONS. I would say that was within 6 months. I do not believe in the last few months. I noticed he withdrew more toward the end.

Senator HEFLIN. Well, I am just saying that a person is left in a quandary for an explanation. If the statements he has made about you are incorrect, then why is he "after you," in effect? That sort of thing naturally raises some questions.

This raises a question in my mind. I am trying to reach a clear understanding.

Mr. SESSIONS. I understand that.

Senator HEFLIN. Can you give us any idea of your explanation for his testimony here—his coming here?

Mr. SESSIONS. I hate to try to psychoanalyze or disparage his character. I felt he was a competent lawyer. There was no doubt in my mind that Mr. Figures harbored hostility. He was very professional—and his hostility was not just to me, but to most anyone.

He had great difficulty working with FBI agents. At one time or another, those hostilities would show to almost everyone in the office, deep hostilities. Almost everyone in the office at one time or another has advised me that they have seen him since he left and he would not speak.

I just do not know; I cannot say. I believed that Mr. Figures was honest. I believe that he had hostility and I expected that there would be things said that would not be fair, a fair rendition of what had happened in my office. But I was disappointed at some of the things that were said that I state to you did not happen.

Senator HEFLIN. Mr. Hebert and you now have several statements in your testimonies which are in conflict. Is there any reason, other than faulty recollection either on your part or on the part of Mr. Hebert, that would indicate an explanation for these conflicts?

Mr. SESSIONS. No; I have thought maybe that some of the controversial lawsuits that I questioned him about—maybe he had had to fight those through the Department and then had to come down, and I would give him a hard time about it, but I never really gave him that hard a time.

I always signed any complaints and pleadings that he asked. Maybe he—I do not know about that. He is—we know that his recollection is not as good as I thought it was when we came in, and I think it would be easier to misrecollect a private conversation than one involving an actual case

Senator HEFLIN. I believe that is all.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Denton.

Senator DENTON. Thank you, Mr. Chairman.

Mr. Sessions, in the wake of the resignation of Mr. Figures, did you ever consider an attempt to hire another black attorney as an assistant U.S. attorney?

Mr. SESSIONS. Oh, yes. I think I have affirmatively sought out qualified applicants. As a matter of fact, I did offer the job to two black attorneys simultaneously that would have added two to the office.

Senator DENTON. Who were they?

Mr. SESSIONS. Well, I am not sure—I do not mind saying it, but they both have good jobs and decided to stay with their employment. I think the minority investigator is aware of their names and probably has talked to them.

It would have been immediate raises for them and they considered it, but decided not to. I have also interviewed two others. I still believe that it is important in an office like ours that we have black attorneys.

The percentage of black attorneys as compared to white attorneys, of course, is much lower than the percentage of whites and blacks in the population.

Senator DENTON. If you prefer not to give the name, for reasons that are OK with me, have you been involved in conversations regarding either of those applicants with respect to another job, any other position that might develop at some time?

Mr. SESSIONS. No, I have not—oh, I did talk to one of the lawyers and did tell him that I thought it would be important and good for Mobile if he would come back to Mobile, because he had the talents and the abilities to do anything in Mobile, to hold any office, and that he had much to contribute to the community. And that was my pitch, really, that I gave to him.

Senator DENTON. Would you consider that man qualified to hold the position that you now hold?

Mr. SESSIONS. Oh, I think so.

Senator DENTON. Mr. Chairman, I would end my part of this by requesting that we include in the record an article dated May 6 by Tom Wicker, in which some more characteristic misleading in the media took place, in which in an article criticizing Mr. Manion and Mr. Sessions as prospective Federal judges, he, inter alia, says about Mr. Sessions—after saying that it would be blatantly bad to let Manion go, he says, "So, too, would be the confirmation for Jefferson Beauregard Sessions III of Alabama, whose record of confirmed racist statements would disqualify him for a police court judgeship in any American city.

"Mr. Reagan has nominated him to the Federal district court in southern Alabama, and Mr. Sessions is up for another Judiciary Committee hearing today, though even the Birmingham News has urged that his nomination be withdrawn."

I would like to have that article inserted in the record, along with the following editorial from the Birmingham News, dated Friday, May 2, 1986, which I will quote in part. It is headlined "Another Look At Sessions."

It begins, "After the initial hearing on Jeff Sessions' nomination to the Federal bench in southern Alabama, we questioned his fitness to serve as a Federal judge and urged his sponsors to withdraw the nomination.

"Based on what was presented at that hearing—not only the accusations, but also the testimony of Sessions himself—we likely would reach the same conclusion again.

"However, much has happened since that first hearing on March 13. In light of subsequent events, we believe the matter should be reconsidered.

"We had been concerned that by his injudicious remarks, Sessions had betrayed a lack of judicial temperament. Sessions denies most of the insensitive remarks attributed to him, and credible witnesses have testified such sentiments would be out of character for the young attorney."

The last sentence of the editorial says, "We believe, though, that Jeff Sessions deserves another look." So Tom Wicker was quoting the first editorial of the Birmingham News 4 days after a change in the Birmingham News' editorial regarding this subject.

I ask that both articles be included in the record.

The CHAIRMAN. Without objection, so ordered.

[The following was received for the record:]

Friday May 2, 1986

THE NEWS EDITORIALS

ANOTHER LOOK AT SESSIONS

After the initial hearing on Jeff Sessions' nomination to the Federal bench in southern Alabama, we questioned his fitness to serve as a Federal judge and urge his sponsors to withdraw the nomination.

Based on what was presented at that hearing—not only the accusations but also that testimony of Sessions himself—we likely would reach that same conclusion again.

However, much has happened since that first hearing on March 13. In light of subsequent events, we believe the matter should be reconsidered.

We had been concerned that by his injudicious remarks, Sessions had betrayed a lack of judicial temperament. Sessions denies most of the insensitive remarks attributed to him, and credible witnesses have testified such sentiments would be out of character for the young attorney.

Even so, the things that Sessions acknowledges he did say or might have said are troubling. But the confirmation process, painful as it might have been for Sessions, has also been an educational process for him. He visited us recently, and impressed us as being keenly aware of the need to be careful about what he says. He may once have joked about the Ku Klux Klan, but we believe he knows better now.

Sessions, the U.S. attorney in Mobile, also is persuasive in his assertion that the statements attributed to him do not reflect his true feelings on civil rights civil rights organizations and the Klan.

We also had been concerned that some people, especially black citizens, might have gotten the idea that they would not receive a fair hearing in Sessions' court. While that perception might persist in some quarters, the record of later hearings should convince all members of the community that the perception simply is not true.

Typical of the later testimony on Sessions' behalf was the statement by Larry Thompson, a black lawyer and former U.S. attorney who has worked and roomed with Sessions. He called his friend Sessions "a good and honest man, untainted by any form of prejudice."

The later hearings and our conversation with him did not remove all doubts about whether Sessions should be a Federal judge. We still don't know if he can be confirmed. If he is, he will have to earn the confidence and respect of all those who turn to him for justice. But we no longer view the questions raised at his initial hearings as disqualifying.

We urge all members of the Senate Judiciary Committee to put aside partisan motives and view this nomination with an open mind. We understand that some senators may think they know all they need to know about Sessions, and that reconsideration can involve some painful soul-searching. It did for us.

We believe, though, that Jeff Sessions deserves another look.

The CHAIRMAN. Anything else?

Senator DENTON. I do have some questions, Mr. Chairman.

Mr. Sessions, after today's hearing and the previous one, do you have any other remarks that you would like to offer to the committee, especially to those who may have previously reached the conclusion that you are racially biased?

Mr. SESSIONS. I do not know that I do, Senator Denton, except to say that I have seen racial prejudice in my lifetime; I have seen it firsthand. I have rejected that way. I do not believe it is never a part of me for many, many years.

I know that people have been discriminated against. I know that people are discriminated against today, perhaps not as much legally as it used to be, but in many subtle ways, and that there are many instances in which the Federal courts and Federal law or the Constitution requires redress, and I will have no hesitation in doing that.

I do not want to make any point of my personal dealings and feelings with people, but I have had no problems in my relationship, in my commitment. I rejected being members of private clubs. I am not a member of any that discriminate. I have specifically rejected that.

Senator DENTON. Are you saying you refused to join racially exclusive clubs?

Mr. SESSIONS. Yes, I have.

My children are in public schools, substantially integrated public schools. I have taught in a majority black school before I went to law school. My wife has taught in majority black schools for 3—taught there 3 years.

I do not know how to answer these charges and what to say. We are committed to public education. I want to see harmony in the South among the races. I have told a number of political leaders that I consider the most important issue probably facing any Southern politician today is to move to harmony amongst the races.

This constant battle and counterattack, and so forth, is really harmful to the community. It drives away business, it hurts blacks, it reaggravates hostilities that we need to put behind us.

Those are some of my concerns, Senator Denton.

Senator DENTON. Would that compose what you would regard as your view of the new South?

Mr. SESSIONS. I think that is the way we are moving, the way we have got to move, and it is the right way to move.

Senator DENTON. Do you know how Alabama stands in terms of the number of black elected officials?

Mr. SESSIONS. I have heard it is the highest in the Nation; I understand that it is.

Senator DENTON. That is correct. It is the highest in the Nation, not just per capita, but the highest in the Nation.

Do you know how many black mayors Alabama has, including the mayor of its largest city?

Mr. SESSIONS. I do not.

Senator DENTON. At last count, 31, which is also higher than any other State in the United States, not per capita but absolute.

Did you ever publicly recognize some abuses by law enforcement authorities of the rights of blacks? Did you express your own view of whether such abuses would be investigated?

Mr. **Sessions**. Yes. Shortly after I became U.S. attorney, I was invited to speak to the State convention of the Alabama chiefs of police and I took that opportunity to tell them that we both knew—I just told them frankly that the policy on civil rights investigation of police brutality would not change.

I told them, as we both knew, that blacks had been discriminated in the past by police officers and that this was wrong, and that the Federal Government would continue to investigate those cases.

Senator **Denton**. How were criminal civil rights cases assigned in the office prior to the departure of Thomas Figures?

Mr. **Sessions**. Generally, the FBI agents were aware that he handled civil rights. If they had a new case that came in, they would go straight to him. That was not an iron law, but they understood that that was his role and, for the most part, that was the way they handled.

That was certainly my policy. When I found out that some few cases had not been going to him, I talked to the FBI supervisor and agent and made clear my position that they were to go to him.

Senator **Denton**. I have no more questions, Mr. Chairman. I would like to thank you personally for your presence here throughout this long hearing today, considering the tremendous responsibilities you have as President pro tempore of the Senate.

I have reread the letter of Mr. Crump, of the NBA, the National Bar Association, which was referred to by Senator Kennedy. I have a copy of that report to which the letter refers, and the letter essentially says that although they did not include in their report on Mr. Sessions the charge that he had referred to Mr. Figures as boy, that indeed Mr. Figures had told them that he had been referred to as boy. That is the general essence of the letter.

I find it impossible to believe, considering the sensational aspect of the charge that Mr. Figures was called boy on a regular basis, which they say was given to them—I find it impossible to believe that among the many trivial allegations which were included in a very thick report submitted by that organization that they could have omitted the boy allegation, if indeed it had been made, because they certainly scored up everything they could against Mr. Sessions in this.

I want to make it clear to you, Mr. Chairman, and to anyone who cares to know that although I am criticizing a bias of the NBA, in my view, I too am, like Mr. Sessions, interested in seeing the development of a colorblind South.

I have not heard Mr. Sessions say anything that I disagree with in that direction. I believe that the renewal of the South in terms of economic recovery, the development of the Sun Belt in such a renaissance-like way, is principally due to the fact that the black community, which had been suppressed for centuries either in the form of slavery or discrimination, is at least released from most of the previous abuses, have enjoyed a greater equality of opportunity with respect to education and jobs, and that that bringing to bear of that part of humanity, the most precious natural resource of any area, is the reason for the rise of the South economically; that the production of goods and services which has been made possible by those people being given the chance to participate therein is the reason and the promise of the future.

That process is proceeding; it is proceeding, again, in a seesaw fashion because there are some problems, and they work both ways these days. Sometimes there is overaffirmative action taken, sometimes underaffirmative action taken.

I do not have any problem with people exaggerating on the side of needing, wanting more rights. I do have a problem with prejudice, bias, hatred on either side, and I just wanted to say that for the record and thank you again, Mr. Chairman, for chairing this hearing.

The CHAIRMAN. Any more questions, Senator Heflin and Senator East?

Senator HEFLIN. No questions.

Senator EAST. No.

The CHAIRMAN. Mr. Sessions, I just have a very few questions here.

Do you know of any bigotry on your part or any hatred on your part toward black people or any other people that would prevent you from dispensing justice in an even manner and a fair and honest manner?

Mr. SESSIONS. No, sir, I do not.

The CHAIRMAN. Have you ever taken any step before you became U.S. attorney or during your service as an U.S. attorney that would indicate that you do have bigotry or hatred in your heart toward black people or other people?

Mr. SESSIONS. No, sir.

The CHAIRMAN. Has anyone accused you of unfairly treating black people or other people?

Mr. SESSIONS. Only basically this *Perry County* case is the first time we have been accused.

The CHAIRMAN. As I understand, the *Perry County* case was a voting fraud case, was it not?

Mr. SESSIONS. That is correct.

The CHAIRMAN. That case was brought by black people against some of the black leaders, and the FBI was called in to investigate, which the black people wanted. And when the FBI made its report, they recommended that you prosecute certain of those leaders, is that true?

Mr. SESSIONS. That is basically correct.

The CHAIRMAN. In prosecuting those leaders, did you do it because they were black people or because the FBI convinced you they had evidence that the black people should be prosecuted at the request of other black people?

Mr. SESSIONS. It was done merely because there was a clear violation of the law. We had previously been requested by a majority black grand jury to investigate that case.

The CHAIRMAN. It is your duty as U.S. attorney to prosecute them, regardless of whether they are white, black, tan or otherwise, if they violated the law and the FBI had the evidence and said they should be tried?

Mr. SESSIONS. That is correct.

The CHAIRMAN. Do you know of any discrimination that you have shown against any people on account of their color?

Mr. SESSIONS. No, sir.

The CHAIRMAN. Do you know of any prejudice you have shown against anyone on account of their color?

Mr. SESSIONS. No, Mr. Chairman.

The CHAIRMAN. Have you pursued any racist attitude or perpetrated any act that would be considered racist since you have been U.S. attorney, or before then?

Mr. SESSIONS. Absolutely not.

The CHAIRMAN. Do you feel like you can render justice to all people, regardless of race, creed, color, religion, national origin, or what not, if you become a U.S. district judge?

Mr. SESSIONS. Yes, I do, to the best of my ability.

The CHAIRMAN. Now, I notice you have been endorsed here by the Honorable Ferrill D. McRae, judge of the 13th judicial circuit, Mobile, AL, and on behalf of the 10 judges of that court. Do they still endorse you?

Mr. SESSIONS. Yes, sir, to my knowledge.

The CHAIRMAN. I notice you have been endorsed by the Honorable Braxton Kittrell, judge of the 13th judicial circuit, Mobile, AL.

Mr. SESSIONS. Both testified at this committee on my behalf. Judge McRae is the presiding judge of that circuit. The former presiding judge, Judge Robert Hodnut, has also communicated strong support on my behalf.

The CHAIRMAN. I notice you have been endorsed by Larry Thompson, former U.S. attorney, Atlanta, GA, who was a black U.S. attorney. Is there any change in his position?

Mr. SESSIONS. No, sir, not to my knowledge.

The CHAIRMAN. The 13th judicial circuit—is one member of that court a black judge?

Mr. SESSIONS. Yes, sir.

The CHAIRMAN. And they endorse you?

Mr. SESSIONS. Yes, sir.

The CHAIRMAN. I notice you have been endorsed by William Kimbrough, a former U.S. attorney, southern district of Alabama. Is he still backing you?

Mr. SESSIONS. Yes, sir. He came and testified before this committee.

The CHAIRMAN. I notice you have been endorsed by Bobby Eddy, chief investigator, district attorney's office, Mobile, AL. Is there any change in his position?

Mr. SESSIONS. No, sir. He was the investigator on the *Michael Donald* case and the 17th Street bombing case involving the Ku Klux Klan in Birmingham. He solved that case.

The CHAIRMAN. I notice you have been endorsed by George Horn, of the Mobile County Republican Executive Committee, and he is a black man, is that correct?

Mr. SESSIONS. Yes, sir.

The CHAIRMAN. Any change in his position?

Mr. SESSIONS. No, sir.

The CHAIRMAN. I noticed you were endorsed by LaVon Phillips, legal assistant and administrative assistant, Perry County District Attorney's Office, Marion, AL. Is there any change in his position?

Mr. SESSIONS. Not to my knowledge.

The CHAIRMAN. Since this hearing started?

Mr. SESSIONS. I have no reason to believe he has changed in any way.

The CHAIRMAN. There has been a lot of publicity about this matter and I just wanted to check to be sure how these people stand.

Mr. SESSIONS. I appreciate very deeply their willingness to come and testify on my behalf, in spite of some of the publicity.

The CHAIRMAN. I believe you have been endorsed by Judge John F. Butler, circuit judge, 13th judicial circuit. That is a State court in Alabama?

Mr. SESSIONS. Yes, sir.

The CHAIRMAN. By John Whetstone, district attorney, 28 judicial circuit, Bay Minette, AL. Any change in the position of either one of those gentlemen?

Mr. SESSIONS. No, sir, not to my knowledge.

The CHAIRMAN. I notice you have been endorsed by Henry McMaster, former U.S. attorney, district of South Carolina. Where did you know Mr. McMaster and what caused his endorsement?

Mr. SESSIONS. Mr. McMaster was a great U.S. attorney, did a magnificent job in investigating financial aspects of drug smuggling. We had several conferences. We went to his office in his district and he explained his very successful techniques. I consider him a good friend.

The CHAIRMAN. In other words, you worked with him in legal matters?

Mr. SESSIONS. Yes.

The CHAIRMAN. Investigative matters?

Mr. SESSIONS. That is correct.

The CHAIRMAN. Now, we have numerous letters endorsing you from other people. I will not take time to go any further, but I have tried to listen to this entire matter all the way through. And when the President appoints someone, it is assumed that he is qualified; there is a presumption that he is qualified because the President has an investigation by the FBI before he appoints.

Then this committee has to investigate it, the Judiciary Committee, and I have told my investigator all the while that if there is anything against anybody, I want to be the first to know if there is any detrimental information. I think that is important. This committee should be very careful and not recommend somebody who discriminates or is not fair or not qualified.

But all of these people have found you qualified. Now, I will not take time to go into these other letters and other people, and so forth.

Senator DENTON. Mr. Chairman, if you are pausing, may I ask that one other thing be entered in the record, please, sir?

The CHAIRMAN. What is that?

Senator DENTON. It is an article again showing the bias in the newspapers, and this is in Montgomery, AL. This is the Montgomery Advertiser, a major newspaper in that city. There is an article in it headlined—and this is Tuesday, May 6, headlined "Black Contends Race Not Issue in Sessions Hearing." It is by Alvin Ben, Advertiser staff writer, and it is datelined Marion, AL.

There is a paragraph in it that says, quoting a man named J.L. Chestnut, who is a partner in a law firm with Henry Sanders, who is reported so frequently as a testifier as to the criticisms of Mr. Sessions—he does not look kindly upon him.

This Mr. Chestnut is a writer, also, in the Selma newspaper. Mr. Chestnut says as follows: "When he admitted"—and he is talking about Sessions—"When he admitted that he referred to Tom Figures as 'boy,' it did him little good," Chestnut said.

He goes on "I would think that anybody who admitted such a statement on the record would have problems becoming a federal judge." That is from an article of May 6, Montgomery Advertiser, quoting this fellow, J.L. Chestnut, with whom Henry Sanders is law partner.

Is that correct, Mr. Sessions?

Mr. SESSIONS. Yes, sir. Mr. Chestnut was one of the defense lawyers in the *Perry County* case, also.

Senator DENTON. And you know, Mr. Chairman, and everyone within the sound of my voice, that Mr. Sessions has never admitted calling Mr. Figures "boy," so this is a lie. He has denied calling him "boy" and this is a lie—"when he admitted that he referred to Tom Figures as 'boy.' "

So this case is not very fair in terms of that which has been leveled against Mr. Sessions, and I hope this hearing has cleaned up enough of it.

I would ask that this article be included in the record.

The CHAIRMAN. Without objection, so ordered.

Now, I want to ask you this question, then, since he has raised that point again. Did you call Mr. Figures "boy?"

Mr. SESSIONS. No, sir; I did not. I have not admitted it any time. The first I ever heard of that, it was——

Senator DENTON. Would you start your answer again? I could not hear it.

Mr. SESSIONS. The first time I had heard that was at this last hearing. I have denied it; I denied it consistently. I have never told anybody I have admitted that I have said that.

The CHAIRMAN. Let me ask you this now. There was something said about the Klan. I believe you stated either today or previously that you hate the Klan and you are opposed to what it stands for. Is that the essence of your statement?

Mr. SESSIONS. Absolutely. It is a hate-filled organization that teaches prejudice and divisiveness, and is inconsistent with what I consider to be the highest values of our country.

The CHAIRMAN. Now, I want to ask you this straight question. Did you say that that gentleman, Mr. Blacksher, is a disgrace to his race? Did you make that statement or not?

Mr. SESSIONS. No, sir.

The CHAIRMAN. Well, how in the world did all these things get around? Innuendoes have gotten out in the press and it is very unfair to you if all these things are untrue, and that is the reason I am trying to clear them up. I am asking you these direct questions so we can get direct answers.

Again, I say if you are confirmed by the committee and the Senate, can you be fair to anyone who comes before you in case of a trial, and feel that he can get an honest, fair trial?

Mr. SESSIONS. They certainly can, yes, sir.

The **Chairman**. I think that is about all that I have to say, Mr. Sessions, and I think you have answered directly and cleared up certain matters. In your previous testimony, maybe you were a little hesitant about a few things that you did not want to hurt people's feelings, but sometimes you have to hurt people's feelings and I am glad you have answered directly and clearly so there can be no misunderstanding just as to where you stand.

After all, that is the way people should be, be frank and direct, and then people can understand your position in matters.

I believe this is the fourth hearing we have held on this matter. We have spent about 20 or 21 hours on it, so this concludes the hearing and it will be brought up before the committee.

In view of the statements that you have made, if I had not attended any other hearing than today, where you have answered directly and nobody, as I understand it, has contradicted you or gone back on their previous endorsements, it appears to me, after all the investigations that have been made, that you are qualified and I expect to support your nomination.

Is there anything else you have?

Senator **Denton**. No, just to thank you again, Mr. Chairman, for permitting the time to take this other look, and I appreciate that very much since the man is my nominee and I am very proud of his service as a U.S. attorney and I look forward to being proud of his service as a Federal judge.

The **Chairman**. Senator East, do you have any statement before we adjourn?

Senator **East**. No.

The **Chairman**. We now stand adjourned.

[Whereupon, at 12:55 p.m., the committee was adjourned.]

BIOGRAPHY

JEFFERSON B. SESSIONS III

Birth: December 24, 1946, Selma, AL.

Legal Residence: Alabama.

Marital Status: Married to Mary M. Blackshear Sessions, 3 children.

Education: 1965–69—Huntingdon College, B.A. degree. 1970–73—University of Alabama School of Law, J.D. degree.

Bar: 1973, Alabama.

Experience: 1973–75—Guin, Bouldin & Porch, Associate. 1975–77—Assistant U.S. Attorney, Southern District of Alabama. 1977-1981—Stockman & Bedsole, Associate and Partner. 1981-present—U.S. Attorney, Southern District of Alabama.

APPENDIX

NBA

Fred D. Gray
President

Thomas J. Broome
President-Elect

Charles S. Johnson, III
Vice President

Thomas A. Duckenfield
Vice President

Walter L. Sutton, Jr.
Vice President

Joyce A. Gates Mitchell
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Frank Seales, Jr.
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John A. Turner, Jr.
General Counsel

David E. Neely
Parliamentarian

John Crump
Executive Director

May 6, 1986

The Honorable Edward M. Kennedy
Senate Judiciary Committee
113 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Kennedy:

In connection with the nomination of Jefferson B. Sessions, III, the National Bar Association ("NBA") conducted a number of interviews with individuals who had personal knowledge of the nominee and his record. In order to assure that individuals whom we interview are entirely candid, it is the general practice of the National Bar Association to treat as confidential the identity of those whom we interview, as well as those details of an interview which are not included in our written report.

During the Judiciary Committee's confirmation hearing one witness, Thomas Figures, testified that he had in fact been interviewed by the NBA, and that he had told the NBA that he had been referred to by Mr. Sessions as "boy." Your office has advised us that you would like to know whether Mr. Figures described this problem when he was interviewed by the National Bar Association.

Under the particular circumstances of this case we have concluded that no purpose would be served by adhering to our usual policy of confidentiality. Mr. Figures has already disclosed on his own initiative that he was interviewed by the NBA, and has testified under oath about this particular aspect of that interview. Since the Committee evidently regards Mr. Figures' statement to us, or the lack thereof, as of critical importance, we believe we are under an obligation to disclose to the ~~Commission~~ Committee our knowledge of this matter.

NATIONAL BAR ASSOCIATION INC., 1773 T STREET, N.W., WASHINGTON, D.C. 20009 • (202) 797-9002
61st ANNUAL MEETING • JULY 27-AUGUST 2, 1986 • DENVER, CO.
Telex: 469510 Cable: NABAR WSH

Mr. Figures was interviewed by the NBA in July, August and September, 1985. In the course of at least two interviews, Mr. Figures specifically advised us that Mr. Sessions had referred to him as "boy" during the period that Mr. Figures served as an Assistant U.S. Attorney. We questioned Mr. Figures about these occurences, and found his answers entirely consistent and credible.

We understand that some members of the Senate may have assumed, because this matter was not discussed in our report, that Mr. Figures had not described this incident during this interview. We would caution the Committee against attempting in the future to infer the subject matter or scope of NBA interviews from the ultimate content of a report. Because NBA investigations are often exhaustive, at times it is not possible to include in a report all the credible and serious information of which we may be aware, particularly where, as occurred in this case, a nominee has made a number of statements all of which reflect a similar attitude.

Sincerely,

John Crump
Executive Director